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ABSTRACT

This pamphlet was developed to inform teenagers of their civil rights and to encourage them to organize in order to seek more equitable rights. The book is not recommended for classroom use, but rather is written as resource material for young people avidly interested in their rights and in the discrimination against young people by the legal system. Separate chapters discuss the rights to free expression, privacy, protection against illegal search and seizure, equal protection under the law, and due process. The topics of involuntary servitude, cruel and unusual punishment, and legal remedies are also examined. Each chapter presents the constitutional background and legal precedents for each concept, provides insets which feature accounts of incidents relevant to each concept, and illustrates the concepts with captioned drawings. Unfamiliar legal terms are defined in a glossary and a short bibliography is provided for those who want to research the subjects more thoroughly. Two Supreme Court decisions (Tinker v. Des Moines, which extended constitutional rights to children, and the Gerald Gault case concerned with criminal due process rights) are reprinted in the appendix. (KC)

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YOUNG PEOPLE

AND

THE LAW

A Youth Liberation
Pamphlet

SP-011441

GLOSSARY

adjudicatory hearing — a hearing at which the decision is made whether the young person is guilty or innocent based on the evidence. Young people get "adjudicatory hearings" instead of "trials."

pre-adjudicatory — in juvenile court, the pre-adjudicatory period is everything that happens before the young person actually goes to court for the adjudicatory hearing. For example, being "taken into custody," questioned by police, interviewed by a social worker, etc. are all pre-adjudicatory procedures.

adversary proceeding — a hearing where there are opposing sides, each with the opportunity to present their case. For example, in adult criminal cases the prosecutor and the defendant have opposite interests. Juvenile cases are supposedly non-adversary because the court is working **together** with the young person to solve the problem. But in fact there **are** two sides — the young person's and the court's, and when courts don't recognize that fact, the young person can get screwed because no one is **really** representing her interests.

beyond a reasonable doubt; clear and convincing evidence; preponderance of the evidence — there are several different degrees of proof that must be shown before someone is found guilty, depending on what they are accused of doing. The strongest degree is guilt "beyond a reasonable doubt." That means there must be no doubt in the eyes of the jury; they must be fully satisfied, entirely convinced. There can be no other reasonable explanation for the facts except that the defendant is guilty. Guilt shown by "clear and convincing evidence" has two different definitions. Some cases say it's more than preponderance but not quite as much as "beyond a reasonable doubt." Other cases say that it means the same thing as "preponderance of the evidence." Guilt by a "preponderance of the evidence" means that the evidence for one side only has to "tip the scales" to be a "preponderance."

emancipated minor — an emancipated minor is in most respects an adult in the eyes of the law. Parents surrender all rights to care, custody, and earnings of their minor child, as well as all responsibility for support of the child. Emancipation can be achieved by parents agreeing to the emancipation expressly or implicitly by their acts, such as failing to provide support. In some states a minor can be emancipated by a court without parental consent if she can show she can support herself, is continuing with school and doing well, and is responsible and/or has another adult who will help out in emergencies.

fundamental right — fundamental rights are rights that the U.S. Supreme Court has decided are the most important rights and privileges of citizenship. Fundamental rights include the right to travel, First Amendment rights, family and marital privacy rights, and equal protection of the laws.

petition — because juvenile court is not supposed to be criminal in nature, juveniles aren't technically arrested. They are taken into custody and a "petition" is filed in juvenile court alleging what they're supposed to have done and "petitioning" the court to take the case and decide appropriate actions to take to set the young people straight.

reasonable suspicion — a reasonable suspicion is a suspicion based on a rational belief. In the area of school search and seizure rights, reasonable suspicion would allow a principal to search a young person when police could not because police have to have probable cause.

statutes — statutes are laws.

strict scrutiny — some groups have been historically persecuted, including black people and religious minorities. In order to be especially sure that such discrimination is wiped out, the courts require a closer, more precise and careful look at the laws when it is suspected that a member of a racial, religious or national minority is being discriminated against. This close look at the law and the possible discrimination is called strict scrutiny.

reasonableness test — the Supreme Court has held that the government must provide all citizens with equal protection of the law. But that directive isn't treated literally. There are exceptions that can be made, and they must be "reasonable." The test to determine "reasonableness" is called the "rational basis test." See page 22 for the factors considered in the rational basis test.

suspect class — the groups that have, in the eyes of the court, faced such tremendous historical discrimination that their rights must be specially protected are racial minorities, religious minorities, and people of foreign national origin. They are the suspect classes, and when legislation appears to discriminate against them, the **strict scrutiny** test must be used to examine the law.

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YOUNG PEOPLE

and the LAW

by Diana Autlin

illustrations by Aaron McClellan

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1.

INTRODUCTION

HOW TO USE THIS BOOK

The United States Constitution and the Bill of Rights were written nearly 200 years ago, yet it has only been within the past eleven years that some of the rights they supposedly guarantee to *all* have been held to apply to young people. Even now the few rights granted to young people by the courts have been interpreted so restrictively that the same constitutional 'right' is applied differently for young people and adults. Despite the Supreme Court's fine sounding rhetoric in the **Tinker** decision, (see page 44) young people still are not really "people" under law.

As you will discover reading this book, the courts have defined different standards for the rights of young people in practically every major area of the Constitution. Young people have fewer rights in areas of due process, the First Amendment, voting and many others. It is a situation similar to that which was faced by black people and women before they were considered to be full, independent human beings by law. And until children are truly considered to be full people under the Constitution the courts and legislatures will continue their discrimatory practices.

On the other hand, young people have won some important new rights in the past 25 years. We report and explain those victories here. This book couldn't even have been written in 1950 because young people then had no significant legal rights. Of course, as black people and women have discovered, gaining a right in court doesn't necessarily mean the fight is over. Principals, teachers, and even judges have all been known to ignore student rights won in the courts.

We at Youth Liberation are working for the day when there will be no need for booklets on the rights of students, blacks, women, gays, or the poor — because all people will have truly equal rights. But until real democracy is won, young people and students need to know the rights that they do have so that they can be more effective in fighting to expand those rights.

Although this book concentrates on court rulings, it is important to understand that most rights are won in the streets, the schools and the community, not in the courtroom. Judges and legislators do not act in a vacuum. The rights that young people and students have today were won by activists — young people who stood up for their rights, organized others to support their stand, and refused to be intimidated or co-opted by administrators and parents. As abolitionist Frederick Douglas said over 100 years ago, "Power concedes nothing without a demand. It never did and it never will."

Only organized resistance to adults' power over young people can challenge that power. One student alone can't eliminate a dress code or put out an effective underground newspaper. We encourage readers to use the rights discussed in this pamphlet and ORGANIZE!

How to Use this Book

This book is published in the hope that it will help students and young people become more knowledgeable about their rights, and that they then will become more effective organizers. Throughout the book we emphasize the importance of organizing, because we feel that the lack of legal rights for young people in this country is disgraceful and that informed and militant young people can have a large impact in changing that situation. A major shortcoming of most books dealing with the rights of students and young people is that they stop after they have explained what rights young people have. We go further and clearly show the discrepancy between the rights of young people and those of adults, and argue that young people should have at least the same legal protection as adults.

It is inevitable in a book about the law that there will be some words and concepts that are at first difficult to understand. We have done several things to try to make this pamphlet as readable as possible. First, we try to explain some words in the text and through examples. Second, some legal terms are printed in bold face and defined in the glossary on the inside front cover. Readers might want to take a look at the glossary before they begin and consult it (or a good dictionary) as necessary during their reading. Third, we include examples of several cases that help illustrate the concepts being discussed in concrete terms.

Because this pamphlet may be difficult going for people unaccustomed to reading law books (that's almost all of us), we suggest that it be read in small portions. Look over the Contents and pick out areas that interest you. Read them, and then re-read them if necessary. Get used to the legal terminology. Every sentence is important in legal writing because it modifies and shades the meaning of the decision. When reading each section, first try to understand the general concept being discussed. Then note how the discussion explains and modifies that concept. Look to see how the courts have interpreted the application of that concept in real life. Note how they discriminate against young people and then think about how you would write the decision differently.

For example, the first section of the booklet is on the First Amendment rights to freedom of speech, press, religion and assembly. As you read you will learn that there is no absolute right to freedom of speech. Speech (and all expression) can be limited in many instances, such as when it is obscene. Finally, it is most limited when applied to students in school. Here you will note discrimination. Think about the court's reasons for allowing the discrimination and how you would have liked to see them decide the issue.

We have tried to keep this booklet short, which means a lot of information is packed into a few pages. We have eliminated a lot of background to most cases, and some helpful cases have been left out altogether. For readers who want more detailed information we have provided a short bibliography of good sources of information.

Sometimes we say that "half the states have ruled one way, and half the other," or we suggest that the reader "check out their state constitution" to see what rights it provides. Information as to which "half" you're in, or what your state constitution says, or just about anything else can be found in your local library. Don't hesitate to ask a librarian for help in finding legal information.

Note that the Constitutional Amendments at the end of the chapters have occasionally been edited.

Finally, though this book is difficult at times, we guarantee that anyone who attacks it seriously will come out with a thorough and accurate knowledge of the rights that young people do and don't have.

And we encourage readers to keep Anatole France's famous quote in the back of their minds as they read.

"The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread."

Though all young people are surely oppressed in this country, black, chicano Indian and poor youth face additional oppression unrelated to their age. That too must be eliminated for all young people to be free and equal. And there are some "human rights" that are not yet guaranteed in our Constitution — such as the right to work, and of course, the Equal Rights Amendment. It is in the interest of all young people to expand our concept of human rights.

A NOTE TO TEACHERS AND STUDY GROUP LEADERS

This booklet is designed for people who are avidly interested in their rights and the discrimination against young people in the legal system. As such, it is not ideally suited for the classroom, where a more "entertaining" format is helpful. For teachers, or for students who want to go into more detail on the cases mentioned in this book, we strongly suggest **The Civil Rights of Students**, by David Schimmel and Louis Fischer (Harper and Row, 1975, $5.95 paperback). This book is well-written, attractively designed, and prepared with the classroom in mind. Each chapter covers one point of law and has provocative questions for students relating to the issues discussed. Its format is similar to that of this pamphlet so they may be used together if desired.

DEDICATION

This book is dedicated to young people everywhere...
and to my mother, Lorraine, who taught me to fight oppression;
my father, Alphonse, who has loved me through everything;
and my sisters and brothers with whom I have shared the struggle for young people's liberation.

2.

"SHUT UP."

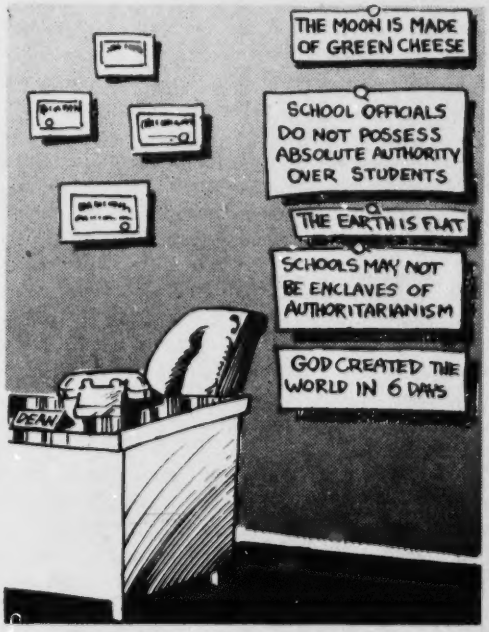
THE RIGHT TO FREE EXPRESSION

The First Amendment[4] may be the most useful and most important of all the rights in the Bill of Rights, because it guarantees the right to organize — to speak, publish, assemble and petition. The first major U.S. Supreme Court decision extending constitutional rights to students (**Tinker v. Des Moines Independent School District**[1]) involved the extent to which students are covered by the First Amendment protection of freedom of expression. (Excerpts from the Tinker decision appear in the Appendix.)

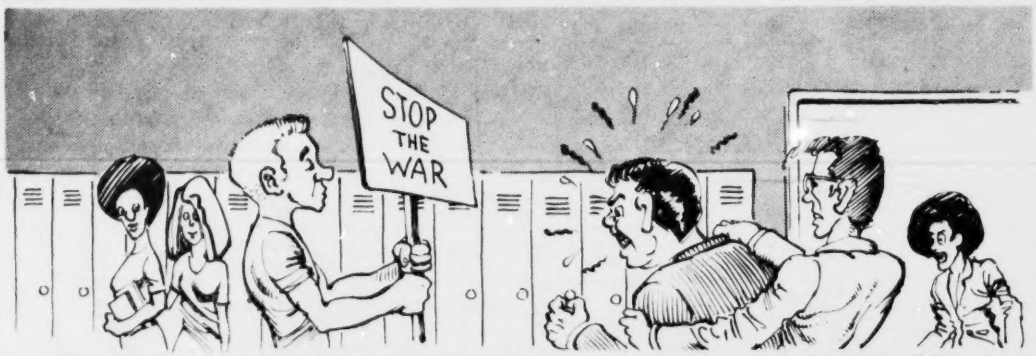
In 1965 protests against the Vietnam war were springing up all over the country. In Des Moines, Iowa, community groups planned to protest the killing in Vietnam by wearing black armbands. The Des Moines principal's association became aware of the plan and adopted a policy that any student wearing an armband in school would be suspended until they decided to remove the armbands.

John and Mary Beth Tinker, and their friend Chris Eckhardt were all suspended. They sued the schools, arguing that their constitutional right to free speech had been violated. The Supreme Court eventually heard the case, and in 1969 it handed down the most strongly worded decision of all time in favor of student rights.

Although the First Amendment has never been interpreted literally by the Supreme Court (so as to prohibit *any* regulation of speech, assembly or press), its protection of adult expression has been reasonably broad since the early 1960s. At the time **Tinker** was decided, adult speech could not be prohibited unless it was obscene or defamatory, it constituted "fighting words," or called for and seemed very likely to present a clear and present danger of imminent lawbreaking or violent overthrow of the government. Unfortunately, the Supreme Court's decision in **Tinker** did not grant students the same rights as adults to freedom of expression. Instead the Court set a different legal test for students, a test that provided some First Amendment protection for young people but still allowed administrators a greater degree of control over student speech than government officials are allowed over adult speech. The Court held that students can be prevented from expressing their views only when they "materially and substantially" disrupt the work and discipline of the school. Although the **Tinker** case specifically involved only


THE MOON IS MADE OF GREEN CHEESE
SCHOOL OFFICIALS DO NOT POSSESS ABSOLUTE AUTHORITY OVER STUDENTS
THE EARTH IS FLAT
SCHOOLS MAY NOT BE ENCLAVES OF AUTHORITARIANISM
GOD CREATED THE WORLD IN 6 DAYS
DEAR

In the Tinker *decision the Supreme Court spoke strongly in favor of student rights, but its words have not rung true in practice.*



Students have the right to express support for unpopular causes at school — and it is the responsibility of administrators to protect them from others who may attempt to stifle their expression.

one aspect of the right to freedom of speech, the right to symbolic speech, it has been held to apply to students' rights of free speech in general: free press, free assembly and the right to freely associate with others.

Tinker is an important case to study, not only because it guarantees students the right to free expression of their views, but also because it upholds the right of students to protest non-school-related issues (the Vietnam War) on school grounds. The Court's decision goes so far as to call student interchange of non-popular ideas "fundamental" to the educational process. Unfortunately, school officials still aren't convinced of that, and many principals privately admit that they violate the standards laid out in **Tinker**. A clear understanding of your rights under the First Amendment is necessary so that you can take action when those rights are violated — or perhaps convince some wishy-washy administrator to stop violating your rights through knowledgeable threats of a lawsuit.

Freedom of Speech

The right to free speech traditionally has been divided into two categories: "pure" speech and symbolic speech. "Pure" speech is what comes out of your mouth when you speak; symbolic speech involves letting some symbol (such as a button or armband) "speak" for you. In traditional analysis, "pure" speech has always been more protected than symbolic speech. Because the first case on students' First Amendment rights to reach the Supreme Court (**Tinker**) involved symbolic speech, the "substantial and material disruption" test has generally been used for both kinds of speech. About half of the state courts have also applied this test to school attempts to control grooming and dress, on the grounds that for many people their dress and hair length are expressions of their views and thus "symbolic" speech.[2]

As in the cases involving adults, courts have generally held that students who express unpopular views in an orderly and non-disruptive manner may not be prohibited from expressing those views because other people threaten or provoke violence against them.[3] In cases of extreme division among students, some courts have held that temporary bans on freedom of speech may be allowed to prevent potentially violent confrontations. However, the ban may only be temporary and can last only as long as the threat to safety and order continues.[4] In general, the mere fact that what you say or the button you wear offends some students, teachers or administrators, is no reason to prohibit you from expressing your views. On the other hand, the courts have been overly cautious in this area — many have been convinced by school officials that seemingly innocuous forms of speech would cause "material and substantial" disruption.

For example, in **Guzick v. Drebas**, the U.S. Court of Appeals ruled that student Thomas Guzick couldn't wear a button supporting an anti-war rally. That seems directly contrary to **Tinker**, but Shaw High School in Cleveland had a long standing rule forbidding buttons, originating from the days when there were competing fraternities and sororities at the school. In more recent times school officials had forbidden students from wearing buttons with racial messages on them. The school felt they were simply upholding a long tradition of banning buttons that might cause trouble and disruption when they told Guzick to take off his button. Amazingly enough, the court agreed that they weren't violating the **Tinker** decision. Let us recall the Supreme Court's words in **Tinker** to show how it has been distorted in **Guzick**:

> "...in our system...fear or apprehension of disturbance is not enough to overcome the right of freedom of expression. Any departure from abso-

... CHEERLEADER TRYOUTS IN THE GYM AT 3:15;
COMMUNISM CLUB MEETS TO PLAN DEMONSTRATION AT 3:00;
EVERY ONE IS URGED TO ATTEND THE DANCE PLANNED BY THE GAY STUDENTS ALLIANCE THIS EVENING AT 9:00 IN THE...

All school clubs must be given equal access to school facilities, even if they support unpopular causes.

lute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom or on the campus, that deviates from the views of another person, may start an argument or cause a disturbance. But our Constitution says we must take this risk...and our history says that this kind of openness...is the basis of our national strength..."

The right to symbolic speech also includes the right of students to sit during flag salutes or to refuse to repeat the Pledge of Allegiance. The U.S. Supreme Court has twice decided that compulsory flag salutes violate the First Amendment, on religious freedom grounds[5] and on free expression grounds.[6] Even school administrators' complaints that when some students remained seated, many other students joined in, has not bothered the court: "The First Amendment protects successful dissent as well as ineffective protest."[7] The same court also said students couldn't be required to get parental approval for their actions.

Freedom of Association

Although the words "freedom of association" do not appear in the Bill of Rights, the right to form groups and associations has long been recognized as an important part of the right of free speech and assembly. Courts have uniformly held that students have the right to form clubs or other school groups as long as the activities of the club do not "materially or substantially" disrupt the school. Official recognition must be given to any such groups, because, "to deny recognition to a student group for the reason that it advocates 'controversial' ideas is patently unconstitutional."[8] Any privileges that go along with official recognition of a school group must also be granted to "controversial" clubs, including use of school loudspeakers to announce club events, participation in school assemblies set up to encourage after-school activities, use of school facilities for social events or meetings, solicitation of funds on school grounds, or invitations to speakers to address club meetings without prior censorship by administrators.[9] Of course, "controversial" groups must meet the same regulations that other school clubs must follow. However, if those regulations are unreasonable or arbitrary, or are set up specifically for the purpose of denying unpopular groups their rights to free association, it is very possible that a court would strike down the regulations or order them changed.

Freedom of Assembly

The right to "peaceably assemble" guarantees your right to demonstrate in an orderly fashion. Although it is generally accepted that adults, or even young people in non-school situations, may demonstrate, parade, etc., so long as they don't cause destruction of property or injury to persons, this freedom has not been extended to students. Most courts uphold disciplinary action taken against students involved in demonstrations on or near school property. The U.S. Supreme Court has upheld a regulation prohibiting demonstrations on or near school property that disrupt school classes. Courts have held that even peaceful demonstrations on school property during school hours "substantially and materially" disrupt the normal operations of the school simply because some students are not in their classes when they are supposed to be. A few cases have not followed this pattern, the most significant being **Gebert v. Hoffman.**[10]

On December 14 and 15, 1970, students in a Pennsylvania high school staged a sit-in during school hours. The students were suspended for "disrupting the normal operations of the school." The suspended students felt their action was protected by the First Amendment and contested their suspensions in court.

The Constitutional right to free assembly at schools has been virtually eliminated by restrictive court rulings. Even the most timid demonstration might be found to be "materially and substantially" disruptive.

The court heard evidence that:

- the students tried to conduct the sit-in without unduly disrupting school operations;
- the demonstration attracted crowds of onlookers;
- school officials were preoccupied keeping track of the demonstration, preventing them from doing their regular jobs;
- some of the demonstrators skipped classes, and created enough noise that some classes had to be moved.

The court decided that the students couldn't be disciplined on the basis of the first three points above: the students *weren't* trying to be disruptive; they couldn't be punished simply because *other* students were attracted to the demonstration area; and the fact that administrators spent a lot of time watching the demonstration didn't mean that the students were doing anything illegal. However, on the last point the court felt that the students' activities were not protected by the Constitution because the noise and rescheduling of classes, and the skipping, indicated "substantial" disruption of the school.

This case indicates that the possibility of holding legal demonstrations in school is practically impossible under present law. That doesn't mean they shouldn't be held, but it means that students should be aware of the possible consequences.

Demonstrations outside the school building but still on school grounds stand a better chance of being held constitutionally protected in cases where students were protesting school policies, or where blanket prohibitions against demonstrations were so broad or vague that they could have been interpreted to prohibit legal demonstrations.[1]

Bill Supports Student Press Rights — A Little

Court decisions are important in establishing student rights, but what are really needed are state laws passed by legislatures guaranteeing students the rights they've won in courts and providing penalties for those who violate the laws. The law discussed below has drawbacks, but it is a step in the right direction.

In early 1977, California State Senator Ralph Dills introduced a bill to permit some freedom of expression in California's public schools. The bill (SB 357) backed by the Los Angeles Journalism Teachers Association, specifically prohibits prior restraints on official school newspapers, and provides that "School officials shall have the burden of showing justification without undue delay due to any limitations of student expression . . ." The bill also mandates the writing of publication guidelines by each local school district, specifying restrictions on time, place and manner of distribution of literature.

At the same time, the Los Angeles Board of Education voted to modify its rules pertaining to official student publications. Formerly, the rule had given the principal the ultimate right to censor the newspaper. Under the new rules, the Board set out guidelines detailing what material would be prohibited in the papers, and established an appeals procedure for challenging administrative rulings. The rules still provide that "the school principal . . . may also review copy prior to its publication, if he so requests."

In addition to libelous and obscene material, the new guidelines specifically prohibit the use of profanity, "material which advocates the breaking of any law . . . Ads for cigarettes, liquor, or any other product not permitted to teenagers . . . [and] endorsements of political candidates or ballot measures, whether such endorsements are made via editorial, article, letter, photograph, or cartoon."

FPS #60

The same school administrators who clamp down on factual reporting about sex often can see nothing wrong with a big dose of sexism in 'their' school newspapers.

If you are disciplined for participating in an on-campus demonstration or for absence from class, check to see if your punishment is harsher than that received by students who are truant for other reasons, or who "disrupt" the school in other ways. Your school may not give heavier punishment for political disruption than it gives for non-political disruption.

Your participation in a demonstration off of school grounds and after school hours may not be used by school authorities as grounds to lower your grades or subject you to any disciplinary action.[12]

Freedom of the Press

As journalist A.J. Liebling said: "Freedom of the press doesn't mean much if you don't happen to own a press." Having access to "the press" requires money and power, and only a handful of people meet those requirements. Still, by law adult publishers are protected by many Supreme Court decisions under the First Amendment if they decide to put out a paper, or publish leaflets and pamphlets on almost any subject they wish. Their rights can only be denied if what they publish is obscene, defamatory, or calls for and seems very "likely to cause imminent lawbreaking or overthrow of the government." The rights of students in this area are not as broad, since students need not threaten any law or the government and they may still be legally censored. The test is the same as the student test for speech and assembly; student publications may not be obscene, defamatory, or substantially and materially disruptive of the school. However, as in all First Amendment cases, the administration must show proof of why they need to censor your paper. And in most cases, prior censorship of your material is not constitutional. Two cases help illustrate some of the issues involved in student press cases.

AWAKENING[13]

In 1972 Mark Shanley and four other students were suspended from a San Antonio, Texas high school. Their crime: publishing **Awakening**, a high school underground newspaper. The principal and school board were upset with **Awakening** and its editors for several reasons: **Awakening** discussed drugs, birth control, the draft and other controversial issues; it was critical of the administration; and it was distributed without prior approval from the principal.

The administration thought the materials in **Awakening** were "potentially disruptive," and that it subverted the "proper learning situation" in San Antonio schools.

A lower court upheld the students' suspension, but U.S. Appeals Court Judge Irving Goldberg overturned that decision, calling the school board's legal position "judicial believe-it-or-not," resting on a "constitutional fossil." The judge noted that he didn't feel prior approval schemes were necessarily unconstitutional, as long as they were designed solely to prevent disruption, not stifle opinion. But he felt that the San Antonio rules were too broad, contained no standards to guide their application and contained no fair procedures for appeal. The school's policy read:

"Any attempt to avoid the school's established procedure for administrative approval of activities such as the production for distribution and/or distribution of petitions or printed documents of any kind, sort, or type without the specific approval of the principal shall be cause for suspension."

THE COSMIC FROG[14]

Another case in 1972 went beyond the Shanley decision, specifically protecting high school students from having to submit papers to the administration for "prior approval."

In the case of **The Cosmic Frog**, students Burt Fujishima and Richard Peluso were suspended from their Chicago high school for passing out their paper

without submitting it for prior approval. Chicago Board of Education rules required that all publications distributed on campus be approved by the Superintendent of Schools.

The Court ruled that because the policy required prior approval it was unconstitutional. Judge Robert Sprecher said that even if administrators feel they can "forecast" disruption if a particular article or paper is distributed, they may not suppress it. The judge interpreted **Tinker** to mean that students who pass out publications that cause disruption may be legally *disciplined* by the school, but that **Tinker** is "not a basis for establishing a system of censorship... to prevent the exercise of First Amendment rights."

The most important points to consider when you're trying to decide whether or not your school has the right to censor your publication are: the reason the school gives for controlling expression; the type of publication being censored (official school paper or underground); and the way the school tries to censor it. Your legal rights depend on this combination of factors. There are some guidelines that will help you decide whether you may face censorship or even whether you should go ahead with distribution even though censorship is applied. Administrators might try censorship just because they don't like your ideas.

Prior Restraint Forbidden; Sale on School Grounds Allowed by California Supreme Court

The summer 1974 issue of **The Red Tide**, an unofficial student newspaper distributed in the Los Angeles County school system, contained an article about the principal of Locke High School, which called him a liar.

On May 31, 1974, Susannah Bright, a student at University High School, wanted to distribute the issue at her school. She submitted it to the principal for review.

He felt that the article was potentially libelous and told Bright that he would have to check with the Locke High School principal before authorizing distribution.

After being told by the Locke High principal that the statements classified as lies were in fact true, he refused to allow Bright to distribute **The Red Tide**. No formal investigation was undertaken to determine the accuracy of the principal's statement.

On June 5, 1974, Bright brought suit in Superior Court of Los Angeles County seeking a declaration that her principal acted unconstitutionally in employing prior restraint on a publication. Claiming that the statute in question did not permit prior restraint of libelous material, Bright sought an injunction preventing school officials from interfering with distribution of **The Red Tide**. When both claims were denied, she appealed the decision.

Over a year later, the California Court of Appeals reversed the lower court and decided that the statute did not authorize prior restraints. The court found that, although prior restraints might be acceptable when exercised to prevent disruptive conduct, school officials had not claimed that such conduct was likely to result.

The court also determined that school officials had denied Bright's rights to due process by failing to undertake a thorough investigation of the facts contained in the article. The decision was appealed to the California Supreme Court.

On December 6, 1976, two and a half years after the incident, the Supreme Court found that "it is difficult to conceive that the Legislature in enacting section 10611 intended to resurrect a system of prior restraint . . ." Noting that the wording of the statute did not specify at what time the material was to be "prohibited," the court decided that "school authorities would be authorized to stop distribution" once begun, but could not exercise prior restraint to ban publications in the first place.

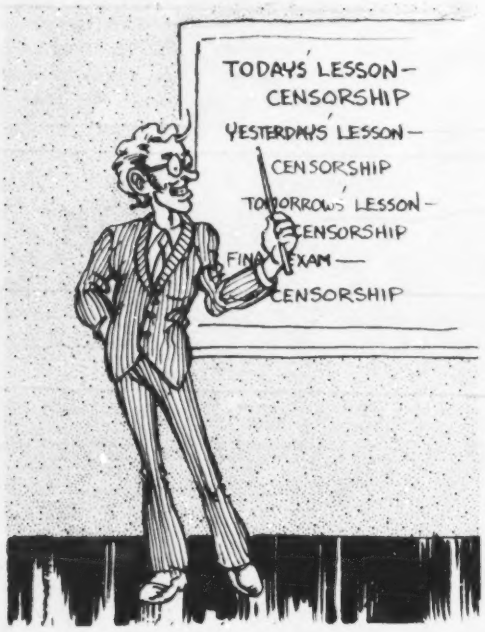
Moreover, the court ruled unconstitutional a school ban on offering publications for sale on school grounds. It would be "at best a strained reading" of the law to say that the school's code prohibited the selling of newspapers, the court held.

Advisors Ignorant of Rights

In a 1972 case, **Fujishima v. Board of Education**, the United States Court of Appeals for the Seventh Circuit ruled that prior restraints on high school publications were unconstitutional. During April and May, 1976, a survey was undertaken among 1200 public schools in the Seventh Circuit, in order to determine the effect of the **Fujishima** decision on the functioning of school newspapers, both official and unofficial. The survey was conducted by Robert Trager, Donna L. Dickerson and Dennis Jarvis.

The survey results reveal that the **Fujishima** decision has had little noticeable effect on prior review practices. In fact, **only 152 of the principals and 10% of the advisors even knew about the case.** Sixty-two percent of those answering the questionnaire believed that administrators still had the power to review material before publication.

FPS #60



Teachers may not censor school papers under the guise of "teaching."

LEGAL BASIS FOR CENSORSHIP

Material and Substantial Disruption: The First Amendment does not protect student publications which immediately cause substantial disruption and/or interference with school activities. Before school authorities may restrict expression on grounds of disruption, they must possess actual evidence that disruption has occurred or will occur. Unsupported fear that student expression *might* cause disruption is not enough to legally justify censorship.[15]

As in the case of freedom of speech, student expression can't be censored simply because administrators fear that other students may try disruption or violence against you because you write about controversial or unpopular ideas. School officials, like police, have the duty to protect speakers and publishers from those who violently attempt to stop that expression.[16] You may not legally be disciplined because of the disruptive acts of others.

Incidentally, even direct criticism of school officials is protected by the First Amendment.[17]

Obscenity: Obscenity is not protected by the First Amendment, either for adults or for young people. But the technical determination of what is obscene can only be made by a court of law, not your principal. The basic guidelines for determining obscenity are the same for adults and young people. Expression is only obscene if it describes or depicts sexual conduct and, taken as a whole, the work in which the sexual conduct is depicted lacks serious literary, artistic, political or scientific value. The judgment is to be made by the average adult person, applying contemporary standards, who must find that the work taken as a whole appeals to a lewd interest in sex.[18] Unfortunately, there is a loophole which says that in determining obscenity, the "relative maturity" of the audience may be taken into account.[19] Neither courts nor adult jurors usually think that young people are very mature, so to avoid obscenity problems you have to be more conservative than adult publications in any use of erotic articles or pictures.

The use of a few four letter words is not obscene, no matter what your principal, advisor, or school board says. Neither is information about birth control. You may publish explicit birth control information without censorship in official school papers or underground publications,[20] even if that information can't legally be taught in classes.

Defamation: Like obscenity, the technical determination of what is defamatory can only be made in court. Meanwhile, school officials can argue that an article is defamatory, and you can argue that it is not. Although you may still have hassles with administrators who want to suppress your paper illegally, just following these guidelines can relieve you of any worries about getting into trouble with the law.

Defamation is the printing or saying of something that falsely damages the character and reputation of an individual by holding the person up to hatred, contempt, or ridicule. Printed defamation is libel; spoken defamation is slander. Libel will only be found where words, photographs or drawings are published and are: (1) false; and (2) cause damage to the character and reputation of the person alleging libel. If you commit libel you may be held personally responsible for money damages that the libelled person can show she suffered as a result of your publication.

If the individual who claims she has been libelled is a public official or a person who has voluntarily placed her activity in the public eye (like a principal or school board member), you are allowed greater freedom in printing critical comments about them. Public officials can't win a case based on libel against you unless they prove that the people responsible for publishing the material knew it was false but maliciously printed it anyway or published it with "reckless disregard for the truth."[21]

Your *opinions* about school officials can be printed as long as they don't deliberately distort facts or falsely and maliciously attack them. For example, if

you believe and feel you have evidence that your principal is racist and incompetent, you can legally print that in an editorial. Remember, administrators can't control your criticism of them or their policies through censorship unless it is absolutely necessary to prevent disruption of the school.

OFFICIAL VS. UNDERGROUND PUBLICATIONS

Non-school-sponsored Publications: It is firmly established that high school authorities can't automatically ban underground or alternative papers from school grounds. But courts are divided on whether independent student publishers who want to distribute on school grounds must submit their paper to administrators for prior approval. Some courts have ruled that any prior approval scheme is unconstitutional.[22] Other courts allow prior approval procedures, but only in accordance with carefully written, pre-existing, published rules.[23] Those rules must only prohibit distribution of material that is obscene, defamatory, or disruptive.

We believe that all prior approval is unconstitutional, but unfortunately even adults have been forced by courts to comply with prior approval schemes in some cases. However, if such a provision exists at your school, we encourage you to fight it, by publicizing the school's actions, student protests, or a court case, or simply ignoring it.

To be "constitutional," a prior approval scheme must:

- specify to whom you must submit materials;
- provide specific examples and definitions of what is forbidden;
- set a reasonable time by which administrators must respond;
- indicate what will happen if they don't;
- provide for a speedy appeal.[24]

School officials have unanimously been given the power by courts to enact "reasonable" rules governing the time, place and manner of distribution of publications on school grounds. In general, publishers of alternative papers should have at least the same distribution rights as publishers of the official school papers. You may even sell underground papers in school, unless no other solicitation is allowed, not even for the United Fund or the band. Remember, school officials have no control over a paper distributed off of school grounds unless they can prove it has or will directly cause disruption.

School-sponsored Publications: Despite administrators' claims that they should exercise complete control over official school publications because they own the paper and are legally responsible for it, most courts have held that school papers are entitled to the same rights as alternative publications.[25] Even the fact that the student paper may be produced by journalism classes as a part of required course work doesn't mean administrators have any greater power over those newspapers. School officials, including faculty advisors, can't censor student expression under the guise of 'teaching'. In both underground and school-sponsored publications, students don't have to identify themselves in the publications. Unsigned leaflets or anonymously published papers have the same rights as those that are signed.[26]

Even teacher-led voluntary prayer is illegal in the public schools — partly because teachers might create a situation that isn't really all that 'voluntary'.

Note: Just because you think that a court might uphold censorship of your paper doesn't necessarily mean that you shouldn't go ahead with distribution. Many courts and other institutions denied the rights of black people for years after they had officially won those rights in legislatures and the Supreme Court. If black people had not broken laws set up to deny them their rights the denial of those rights would be even more widespread than it is today. If you believe what you print, believe that you should be allowed to print it, and are willing to accept the possible consequences of suspension or other disciplinary actions against you, go ahead. Take a stand. We've done it lots of times, and we're still around. If necessary you should be able to put out a paper without anyone knowing who's behind it.

Freedom of Religion

Unfortunately, many court decisions supposedly dealing with your freedom of religion really deal with your parents' freedom of religion and power to impose their religion on you. Parents have the right to make you go to church, attend Sunday school, or even keep you from attending school if it violates their religious beliefs.[27]

However, you do have the right to remain seated during the flag salute because of your religious convictions.[28] You also may refuse to participate in Reserve Officer Training Corps (ROTC) programs without fear of retribution, either through lowered grades or through denial of your diploma.[29] The Supreme Court has also held that school prayers or other religious exercises in school are unconstitutional, even if participation is voluntary or students may be excused from attending them.[30] Of course, school officials may not regulate *your* expression of your own religious or atheistic beliefs, except if it causes disruption.

A. *FIRST AMENDMENT*

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Principals' Association Goes to Court to Argue Against the First Amendment

Not surprisingly, principals are leading the fight to prevent students from winning their First Amendment rights.

The National Association of Secondary School Principals has asked the appeals court for permission to file a 'friend of the court' brief in support of the school board's position in the **Gambino v. Fairfax** case (see **FPS** #58). The lower court had ruled that the Fairfax County School Board could not prohibit Gambino from running an article about contraception in the student newspaper **The Farm News**.

In their argument, the NASSP declared that the law "requires that at least some minimum moral standard be established and maintained by the board or some other governing body of public school districts." Therefore, the principals said, censorship was necessary to preserve the community's "moral" decision not to include contraception in the curriculum.

In what appears to be another reaction to this case, the National Association of Secondary School Principals issued a legal memorandum to its members in April, 1977 dealing with "principles basic to school publications."

> "It will be a tragic day for American Education if First Amendment Rights are stretched and distorted to guarantee total freedom of editorship to the students."

The memo declared that "the courts are rendering opinions which reflect extraordinarily shallow thinking and a lack of understanding.

"It will be a tragic day for American education if First Amendment rights are stretched and distorted to guarantee a total freedom of editorship to the students" the memo stated. "Is a teenager sufficiently clairvoyant to decide unilaterally what is best for his community or the public taste? Would he add excerpts from **Hustler** magazine, advertise pornographic literature and publish the language of 'Oh, Calcutta' because he can interpret social values much better than adults including his parents?"

The memo criticized recent court decisions favoring freedom of expression for students: "In reaching them courts take little or no account of whether the students involved are socially and intellectually mature enough to accept responsibility for their utterances; whether the publication purports to speak for and represent the school community; and to what extent the rights and expectations of other students and the community which provides the schools may be curtailed or defeated."

Who's accusing who of shallow thinking? • **FPS # 60**

3.

"SEX & DRUGS."

THE RIGHT TO PRIVACY

There is no specific part of the Constitution that protects citizens' rights to privacy. The Supreme Court has looked to various sections of the Constitution, including the Fourth Amendment protection against unreasonable search and seizure and the Ninth Amendment,[8] to provide such a right. Because there is no written right to privacy, it is unclear exactly what criteria judges will use to decide whether or not something is protected.

Thus far courts have applied the right of privacy almost exclusively in the area of "family life" (they call it family life, but what they're really talking about is sexuality — pregnancy, intercourse, contraceptives, abortion, gayness). Although the right to privacy is a relatively new idea, there have already been several privacy cases involving young people that have made it all the way up to the Supreme Court.

Remember that your right to privacy is basically a right against the government — *not your parents*! Your parents can go in your room and open your mail, take the money you make at your job, or almost anything else they want. However, there are a few things that you have a constitutional right to demand be kept from your parents. In this chapter we will discuss not only your constitutional right to privacy, but also the statutes that provide protection for your privacy in other areas.

Family Life — Sexuality

CONTRACEPTIVES

As in many other areas, the Supreme Court developed the right to contraceptives step by step. First it upheld the right of doctors to prescribe contraceptive devices to married people, basing their decision on the right to privacy of those couples desiring them.[31] Then it expanded the right to unmarried people.[32] And recently the Supreme Court overturned a New York statute requiring young people to be at least 16 years old to buy contraceptives in drugstores.[33]

Even though the Supreme Court has not yet decided that young people's right to privacy includes the right to obtain birth control devices without their parents' consent, many states provide this right by statute. About half the states permit children of all

In many states children can be committed to mental institutions against their will without a due process hearing.

ages to obtain contraceptives.[32]

All states are required by federal law to offer family planning services to people of childbearing age, including young people. These services must be offered without regard to marital status or age.[34] Because of the language used by the Supreme Court when they upheld the right of young people to obtain abortions without their parents' consent, it is unlikely that states will be allowed to require parental consent for such contraceptive services and supplies.

ABORTIONS

In the companion cases **Roe v. Wade**[35] and **Doe v. Bolton**[36], the Supreme Court held that the right of both married and unmarried women to privacy included the absolute right to obtain abortions during the first three months of pregnancy. The Court also struck down a law requiring minors to get permission from their parents for abortions. This is a victory for young people, for it is one of the few times courts have established young people's rights independent of and possibly against parental authority.

Unfortunately the Court left open the possibility for states to require some degree of parental involvement in the decision to have an abortion. They suggested that "speedy," confidential hearings to determine the competence or "best interests" of the young person might not "unduly burden" the young person's right to privacy.

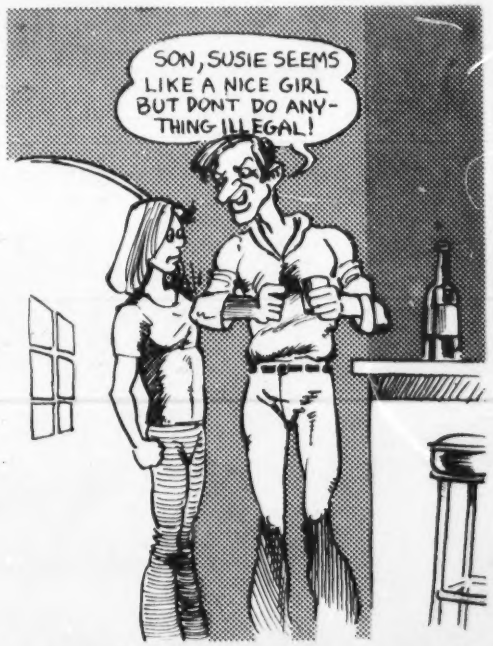
Though there is no Supreme Court case on this issue, it seems clear that parents may not force their daughters to have an abortion against their will.[38]

PREGNANCY AND STERILIZATION

About half the states have laws allowing young people of any age to receive pregnancy-related health services without the consent of their parents. Other states set minimum age limits, ranging from ages 12 — 19.

The picture is about the same for voluntary sterilizations. Young people may consent to sterilization without parental permission in about half the states. Since the Supreme Court would guarantee young people to have abortions without parental consent, it is certain that the Court would guarantee young people's right to pregnancy care without parental consent.

Just as your parents may not require you to get an abortion, they may not require you to get pregnant or be sterilized. In a recent case a young woman is suing her mother for having her sterilized at the age of 14 without her knowledge or permission. The fact that the mother could convince the doctor to perform this sterilization is a sad commentary on the perceived role of young people in this society — as the property of their parents, completely under their control. It also



It is illegal for minors to have sex — but that doesn't seem to prevent millions of teenage pregnancies.

shows that young people will not be liberated simply be establishing their rights against the state. Young people must have rights that can't be violated by parents, either. Parents have the most power over young people — and as you can see by this story, they don't always use it "in the best interests of the child."

MEDICAL TREATMENT

Venereal Disease: Every state provides that minors may be treated for venereal disease or suspected venereal disease without parental consent. The few states that set minimum age limits set them at 12 or 14 years old.

However, a few states require doctors to *notify* parents if their child has a venereal disease. Many states require doctors to inform public health agencies about VD cases, but these agencies do not disclose such information to parents. Some states permit doctors to decide on their own whether or not to tell the parents.

We believe the practice of disclosing venereal disease information to parents is not only a violation of the young person's right to privacy, it should also be a violation of patient-doctor confidentiality. But in this society, you are the property of your parents, and anything that affects you is their business, too. In this

Minors can't consent to medical care except in extreme emergencies — and a doctor who performs medical care on you could be sued by your parents!

area as in the others discussed in this chapter, you should request treatment without parental consent or notification. Your body is your business.

Other Medical Rights: Since you "belong" to your parents, they have the legal power to control what happens to you (within some bounds). Until recently, if a doctor treated you without first receiving permission from your parents, she could be sued for assault and battery (even if *you* had consented). As you might expect, this often kept young people from seeking treatment and doctors from giving it. Many states now say that doctors may treat children without parental consent in medical emergencies, even if the young person is "too young" or too incapacitated to give it herself. A few states allow "mature minors" to consent to medical treatment without parental permission.[D] But in the vast majority of states, it is only in emergencies that young people have any control over their own medical treatment.

If you are an **emancipated minor**, you may consent to your own medical care in about half the states. It's strange but true that in many states you may be completely independent from your parents — living on your own, supporting yourself — and still need permission from them for even routine medical care.[E]

Treatment for drug or alcohol addiction is often allowed without parental consent because public health officials recognize the threat these problems pose to the smooth running of society, and the fact that most young people would not seek treatment for their addiction if their parents had to be told first. Unfortunately the right to receive treatment without parental consent even in this area is not universal.

Occasionally courts will step in and order medical treatment for a young person when their parent or guardian refuses to consent to such treatment. Almost every court will order treatment if the life of the young person is in danger. In less serious cases courts will consider the risk of the recommended care (e.g., surgery), the psychological impact on the child if the treatment isn't given, and the young person's wishes.

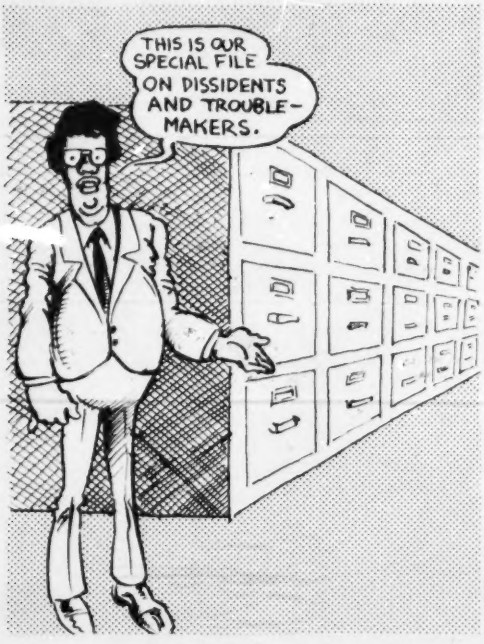
Your parents or guardian must pay for your medical care both when they consent to the care and when a court orders treatment against their wishes. However, if you consent to your own treatment as an emancipated minor or a "mature" minor, *you* are responsible for your own bills. The contract concept that gives young people the right to break contracts does not apply here, for most laws allowing emancipated minors to consent to their own medical care also provide that such a minor must pay for that treatment.

MARRIAGE AND INTERCOURSE

You have no right to marry or have intercourse if you are a minor. Your parents have the right in most states to *allow* you to get married, if you are older than a given age, usually 15 or 16. In most states you need court permission to marry below that age. If you marry without parental or court consent, the marriage is void. As far as the state is concerned, *you aren't married*!

Though recent court decisions have extended the right of young people to receive sex related medical care without parental consent (abortions, contraceptives, etc.), statutory rape laws still interfere with minors' right to sexuality. Almost all states have legal age limits below which *females* may not consent to sexual intercourse (only seven states phrase their statutes in terms of male or female). Statutory rape laws say that even if you want to have sex with another person, your consent is not valid, and if someone sleeps with you they're in trouble. It's easy to see how this could interfere with your love life!

These laws usually apply to females under the age of 16-18. Most young people don't wait that long



Under the Buckley Amendment you and/or your parents have the right to challenge misinformation contained in your school file.

before they have sexual intercourse, regardless of the law. Whether the statutes discourage young people from exercising their sexuality or just punish them and their lovers if they do, there is no place for statutory rape laws in our society. Besides being a violation of young people's right to privacy, they are also a violation of the equal protection clause of the Constitution because in most states only males can be charged with statutory rape, and only young *women* may not consent to sex.

GAYNESS

It is not illegal to be gay, or to say you're gay, or to belong to gay organizations, or participate in gay demonstrations. But for adults and young people, asserting your gayness in a sexual way (i.e., sleeping with someone), is against the law. Eight states now have removed criminal penalties for private/consensual homosexual acts between *adults*. Those states still penalize young gays under rape laws and statutes that provide stiff penalties for sexual acts between adults and young people. Because of the baseless fear that straight society has regarding possible "corruption" or "recruitment" of young people by older gays, proposed statutes are always phrased in terms of "consenting adults."

Unfortunately even consenting adults may not be constitutionally protected from practicing their homosexuality. The Supreme Court recently upheld the constitutionality of a state law prohibiting private consensual adult gay activity. Of course, sexual activity between adult, unmarried straight people is illegal too, but gays don't have the option of marriage to legalize their sexual relationships. And as we've seen, neither do young people.

You're usually safe as long as you keep your sexual activity in private without your parents' knowledge (unless they support your gayness). Police don't usually play Peeping Tom to catch homosexuals (although if they're out to get you for something else they may use that tactic, too).

Of course, you shouldn't have to sneak around. But unless you can get a court to say that your state constitution forbids prosecution for homosexual acts, which hasn't happened so far, you may very well end up in some juvenile home if you are caught. We're not suggesting that you keep your gayness in the closet — far from it. But we do suggest that perhaps you shouldn't be too free and easy in talking about or having sex acts in public places.

PORNOGRAPHY

If reading, listening, or viewing material is legally obscene or pornographic, its sale and distribution is not protected under the First Amendment. However, the First Amendment and privacy rights of the receiver and buyer protect her from prosecution for possession of obscene materials in her own home.

For young people, the definition of obscene encompasses far more than for adults. Most state laws forbid sale or distribution of material that is "harmful" to minors even if that same material is not obscene for adults.[38] Obscenity for minors is often defined as any representation of nudity, sexual conduct, sexual excitement or sado-masochistic abuse when it:

- predominantly appeals to the prurient, shameful or morbid interests of minors;
- is patently offensive to prevailing *adult* community standards as to what is suitable for minors;
- is utterly without redeeming social value for minors.[39]

Notice how you have to submit to what *adults* think is obscene. Remember that in most states you can't be prosecuted for buying or possessing obscene material. But since sellers and distributors can be severely punished, no one will sell to minors. Your parents may even require a commercial mailing house to remove your name from mailing lists.[40] Though the law was designed to protect people from receiving unsolicited materials through the mails, your parents may use it to stop mailings of materials *you* solicited.

Recent court decisions have held that students' First Amendment rights include the right to have books in school libraries that school boards or parents think are obscene, but that don't meet legal definitions of obscenity. This does not change your parent or guardian's right to control what you read or have in your possession at home. You have very little right to privacy against your parents.

School Records

Before 1974 school systems all over the country were having their cake and eating it too with regard to school records. These records, often consisting of biased and unsupported personal opinion comments by teachers and administrators, were considered too private and confidential to show to students and their parents but open enough to show to almost anyone else who wanted access to them — police, employers, colleges, and social workers. The records were kept forever and no notice was given to the students or their parents when they were seen by others.

A few isolated courts,[41] state legislatures, and school systems began to change this situation over the years. Some ordered parental access; some allowed student viewing; a few even required removing material from records or the destruction of cumulative records after a period of time. The Buckley Amendment to the 1974 Family Educational Rights and Privacy Act now 'guarantees' the *parents* of students under 18, and students who are 18 or older. the right to examine school records. Along with that right is the right to a hearing to challenge the records on the grounds that they are false, misleading, incomplete, or inappropriate. Finally, the Buckley Amendment provides that schools must obtain the written consent of a student or her parents before it may allow the release of information from a student's file to anyone other than a specified list of people.

Even if the Buckley Amendment is strictly enforced by the government, it doesn't go far enough. First, students themselves should be able to see and control their own records, no matter what age they are. This is another example of young people gaining rights against the state and then losing them immediately to their parents. Second, there is no provision barring schools from keeping records on the political or First Amendment beliefs or activities of students. Third, although you must be given a list of all people who have been granted permission to see your records, these people may see your records without your consent. Finally, the hearing that is required under the Act if you challenge material does not include the right to cross-examine the author or source of the questioned statement.

The Act does require the hearing to be conducted and decided within a reasonable time by an impartial party. The parents or student must have an opportunity to present evidence, though not necessarily to call witnesses. Finally, a written decision must be handed down to parents and student within a reasonable time.

As you can see, the privacy rights of young people leave much to be desired — like a little privacy!

A. *FOURTH AMENDMENT*

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

B. *NINTH AMENDMENT*

The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

C. The following states permit children of all ages to obtain contraceptives: **Alabama**, Arkansas, Colorado, Washington, D.C., Florida, Idaho, Illinois, Kansas, Kentucky, Maine, Maryland, Michigan, Mississippi, New Hampshire, New York, Ohio, Pennsylvania, Tennessee, Utah, Virginia.

D. Mature minors may consent to medical treatment in the following states by **Statute**: Arkansas, Mississippi, New Hampshire; and **Court Decision**: New York, Washington, Kansas, Michigan, Washington, D.C.

E. States where an emancipated minor may consent to her own medical care: **Alaska**, Arizona, California, Colorado, Delaware, Florida, Idaho, Indiana, Illinois, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, Pennsylvania, Virginia.

F. Only **Alaska**, Washington, D.C., Hawaii, Kansas, Maine, Oklahoma, Washington, and Wyoming have no specific provision for minors regarding obscenity.

ANSWERS TO "FIND THE CONSTITUTIONAL MISTAKES"

Page #'s where you can find more information are in parentheses.

1. Your First Amendment right to freedom of speech (page 5) is violated by the fact that all the later actions were taken to punish you for your comments in the paper (and ongoing activism).

2. All 50 students' First Amendment rights to free speech and assembly (page 6) were violated by their suspension for participating in the walkout. It was peaceful; it was in response to school issues; it was during an open campus lunch hour and non-disruptive.

3. Everybody's right to procedural due process was violated (page 32) too. It obviously wasn't an emergency situation — two days elapsed between the walkout and the suspension notices being sent out. Yet no one tried to contact the students to discuss the matter before suspending them.

4. Your substantive due process is violated too, because they're punishing you for something they know you didn't do.

5. They libeled and slandered you.

6. They violated your right to privacy and the Buckley Amendment (page 17) by releasing information from your school records without your permission — and in a deliberate attempt to injure you.

7. In Michigan, your lockers can't be searched unless they have "reasonable suspicion" they'll find something illegal. No such reasonable suspicion existed here.

8. *Sue them all.* Sue everybody for libel and invasion of privacy and violation of the Buckley Amendment. Sue the school officials individually and in their school capacity for deprivation of First Amendment, due process and unreasonable search and seizure rights.

***NOTE**: This case was decided just as this book went to press. The jury found that the student's privacy and due process rights had been violated, and that he had been libeled. They awarded $1600 in damages to the student.*

4.

"OPEN YOUR LOCKER!"

THE RIGHT TO PROTECTION AGAINST ILLEGAL SEARCH & SEIZURE

The United States Supreme Court has interpreted the Fourth Amendment[41] to mean that a police search is "reasonable" only if it's made with the consent of the person searched, it's conducted with a search warrant, or it's made in connection with a valid arrest; and then only if it's reasonably limited in scope.

A search warrant won't be issued unless the police can convince a judge that there is "probable cause" to believe that illegal material or objects used in connection with illegal activities will be found. When this provision is violated any evidence that is seized may not be used in court. For adults, this rule applies in criminal prosecutions and any other court proceeding that is criminal or quasi-criminal in nature.

Unfortunately the Supreme Court hasn't ruled on the scope of this provision as applied to juveniles and students. Most courts that have considered the issue have held that young people are protected under the Fourth Amendment in juvenile court proceedings to the same extent as adults. Adults and juveniles are both entitled to a preliminary hearing, before the trial starts, to determine whether evidence was seized illegally. However, the courts are divided on whether or not a parent can legally consent to the search of their child's room.[42]

The Supreme Court also hasn't ruled on the Fourth Amendment rights of students. The two most important questions to be considered are: (1) may police or school officials search or authorize a search of a student's desk or locker without her consent; and (2) may police or school officials search a student's person against her will.

Searches of Lockers/Desks

For a search to be legal in the "outside world," police or other government officials must generally have a search warrant signed by a judge, or the consent of the person whose property is to be searched. No court has held that government officials must meet these tests before searching school lockers or desks. They say that since principals usually keep master keys, they have the authority to consent to a search of lockers and desks despite student protests.[43] Lockers are considered property of the school, not of the individual students who use them temporarily. Of course, if principals have the power to consent to such searches they also have the power to conduct searches on their own.[44]

Searches of Your Person

Lower courts are divided on the protection that the Fourth Amendment guarantees to students who object to warrantless searches of their "person" (their body, clothes, purses, etc.). One court has held that students are entitled to *full* Fourth Amendment protection, so that a warrantless search by a school official of a student's personal effects is unconstitutional.[45] But most court decisions give police and school officials more power to search you while you're in school than police are given to search you (or adults) while you are not in school. Warrantless searches of students in school are usually upheld as long as such searches are based on "**reasonable suspicion.**"[46] One court has held that only school officials may make warrantless searches of a student's person based solely on "reasonable suspicion." That court ruled that once the school called in police to conduct the search, the police search had to be based on the adult standard of "**probable cause.**"[47]

Another problem arises when schools punish students for actions off of school grounds. A federal court

Many courts have ruled that parents have the right to consent to a search of their child's room, even against the wishes of their child.

in Texas was faced with this question in the case of two high school students who were searched by police without a warrant. Drugs were discovered during the search, and the students were expelled from school, even though the search had taken place off campus and without the participation of school officials. The court held that the search had been illegal, and therefore the drugs seized couldn't be used as evidence against the students in either a court or a school disciplinary hearing. The students were ordered reinstated.[48] Unfortunately, this decision isn't the general rule.

Because this area is still unsettled, the best advice we can give you is to 'keep clean' on school grounds. Don't put anything in your locker or knapsack that you wouldn't want your principal or a police officer to see. If you or your locker is going to be searched, make sure that you clearly state that you do not consent — *but don't resist* if they go ahead with the search. If you clearly object to the search you can always try to have any evidence seized as a result of the search suppressed, or any disciplinary action overturned.

A. *FOURTH AMENDMENT*

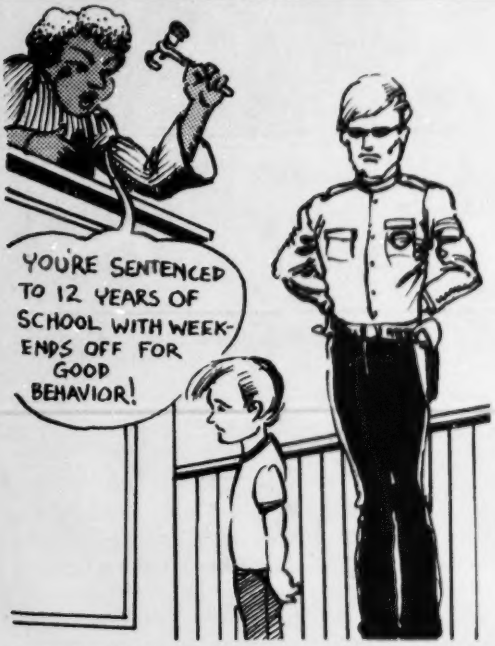
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

5.

"TRUANTS & TROUBLEMAKERS."

MODERN DAY VICTIMS OF INVOLUNTARY SERVITUDE

Forced labor is prohibited by the Thirteenth Amendment to the Constitution.[A] So is confinement against one's will except as punishment for a crime. This amendment was in part inspired by debtors prisons, where people were sent to work off debts (or suffer in prison until someone else could pay off the debt); and in part by the practice of people becoming indentured servants to pay off debts. The biggest reason for the amendment however, was slavery — the concept of one



Young people, mental patients and poor defendants are the only people in this society who are subject to involuntary servitude.

person owning another and directly controlling that person's labor power.

Debtor's prisons have been abolished; slavery is outlawed. But the labor of young people is still not their own.

Parental Control

Because parents have a duty to support their children, courts have uniformly held that they also have a right to their children's earnings from outside employment. Beyond that, parents may demand that their kids work for them either at home or in a family business — *without pay*. The labor of children and the fruits of that labor can be controlled by their parents.

This would seem to be a blatant violation of a young person's right to be free from involuntary servitude. A young person, never convicted of any crime, can be made to work for nothing against their will. But there are no cases holding that the prohibition against involuntary servitude applies to parents and their relationships with their children. Parents can choose their child's religion; they can spank or otherwise punish their children for any reason they want. Parents can decide whether or not their minor children can marry, work, or date; what school they go to; where they live, how long they stay there, who can come over and where they can go. If any of the above sounds familiar, you're probably recognizing some of the controls that masters exercised over their slaves. That's basically the relationship between parents and children under the law today. Just as some states then had laws supposedly protecting slaves from excessive beating or death at the hand of their masters, states today have laws against child abuse. And they're just about as effective as the "slave protection" laws were then. Not very.

Although you have no rights to be free from involuntary servitude against your parents, you do have that right against the state or federal government. And you do have some avenues of escape from parental control over your labor and earnings. Emancipation (see Glossary) or marriage before reaching the age of majority transfers control over earnings to the minor. Even if you are not formally emancipated, living away from home and supporting yourself may be enough to deny parental rights to your income. You could even reach an agreement with your parents — a written, signed agreement! — that you may keep the money you earn, perhaps after putting some amount into the house account to help pay for your support.

Schools

Every state now has compulsory attendance laws. That means that every young person up to a certain age (usually 16) must be in school and must attend classes. A whole para-police organization has been set up to enforce these laws. Truancy officers, school absence monitors, even regular police, all work together to make sure you go to school. Whether you like it or not. No matter how boring it is. Even if you have job opportunities that go down the drain because you have to be in school. Even if you've never broken the law. Just because you're young. And if you don't go, they can send you to a juvenile home — or send your parents to jail! They can even make you do schoolwork at home.

Young people, mental patients, and poor defendants are the only people in this society who can be legally forced to be in a certain place for a certain amount of time against their will without having been convicted of a crime. This should be a violation of the right against involuntary servitude — but it isn't.

A. *THIRTEENTH AMENDMENT*

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

6.

"SPARE THE ROD AND SPOIL THE CHILD"

CRUEL & UNUSUAL PUNISHMENT

The Supreme Court has held that the Eighth Amendment[A] protects jail or prison inmates from corporal punishment, that is, from punishment which consists of inflicting physical violence on a prisoner's body. An inmate may be put in isolation but not beaten or whipped.

There have been two major constitutional challenges to corporal punishment in schools — and both have failed. The first proceeded on a parent's privacy rights theory — the theory that parents have a fundamental right to rear children as they see fit. In that case a mother did not want her child spanked in school, but her child was paddled anyway. The Supreme Court affirmed the lower court decision that the school had a right to punish the child against the wishes of the parent.[49]

A more recent case charged a violation of the Eighth Amendment protection against cruel and unusual punishment.[50] In that case the student had been beaten to the point where he required medical care and could not lie on his back for a month. The court used this opportunity to hold that the cruel and unusual punishment clause only applies to *criminal* situations. It does not protect young people in school. So if you break the law and get put in jail, they can't beat you — but if you're a student and they paddle you, it's legal. Both cases did lay out procedural safeguards that must be met before corporal punishment can be carried through. And the Supreme Court said that **excessive** corporal punishment (whatever that means) could be the basis for an assault and battery suit.

There are also several states where the legislatures (Massachusetts and New Jersey, for example) or state courts have forbidden the use of corporal punishment on their own. Check out your own state laws. If your state constitution has a clause against cruel and unusual punishment there's always the possibility that your state courts will hold that the *state* constitutional provision forbids corporal punishment.

The Eighth Amendment has been interpreted to protect you from physical punishment in juvenile homes, however. Court decisions have forbidden the use of corporal punishment in general,[51] the use of the strap, or boards.[52] When you consider the cases that were brought before courts on this issue, it's easy to see why. One court was presented with evidence of kicking, stomping, and beating of children with fists and sticks as discipline.[53]

We at Youth Liberation believe that corporal punishment not only violates the Eighth Amendment, but the human right of *every person* to be free from physical violence against their person. Although the Eighth Amendment only applies to government action, we also feel that young people must be free from corporal punishment at the hands of their parents.

Laws do exist that restrict the right of parents to use excessive force in inflicting physical punishment, but they are ineffective. And the alternative for an abused young person is usually a state institution where many of the same abuses may exist. We feel that corporal punishment whether severe or not, should never be allowed, not by parents, teachers, or prison guards.

Just because the U.S. Supreme Court has allowed the use of corporal punishment in schools doesn't mean that you have to suffer and take it. The issue of corporal punishment and discipline policies in general are excellent issues around which you can organize students and your community.

A. *EIGHTH AMENDMENT*
Excessive bail shall not be required, excessive fines imposed, nor cruel and unusual punishments inflicted.

7.

"WHITE MALES TO THE FRONT."

THE RIGHT TO EQUAL PROTECTION UNDER THE LAW

State governments must treat all people equally according to the U.S. Constitution.[52] The Supreme Court has since held that the federal government also must provide "equal protection" of law to all citizens.[53] Congress also passed the Civil Rights Act of 1964, specifically requiring equal protection regarding housing, public accommodations, and federally funded programs. So, both federal and state governments must meet requirements of equal protection.

Unfortunately, courts have never read this provision literally, requiring, for example, equal treatment of adults and children. Instead, they have allowed unequal treatment of people as long as the difference in treatment is "reasonably" related to a "legitimate state purpose." Since people don't really have to be treated equally, the courts have devised a "rational basis" test to determine whether a law is constitutional.[55] Two things must be considered under the rational basis test: (1) did the state have a reasonable purpose in passing the discriminatory law?; and (2) is there some difference between groups of people treated differently by the law that makes it reasonable to treat them differently?

In certain cases, however, courts will use a harder test in considering claims of equal protection violations. If a **fundamental right**[56] is in jeopardy, or if the person receiving unequal treatment is a member of a **"suspect classification"**[57], the **"strict scrutiny"** test is applied. If either of these circumstances is present, a court will require the state or federal government to show that an overriding and compelling state or federal interest is at stake[58] — and that there is no other way for the government to achieve its purpose with less interference with individual rights. The traditional strict scrutiny classifications are race,[59] religion and national origin.[60]

More recently, the U.S. Supreme Court has set out a middle ground between the "reasonableness" and "strict scrutiny" tests. This middle test requires courts to look at three things:

- the character of the classification in question;
- the individual interests affected by the classification;
- the governmental interest asserted in support of the classification.[61]

Sex discrimination currently appears to be in this middle ground.

In this part of the pamphlet we will discuss the state of equal protection laws in the following areas: **race, sex, wealth,** and **age** — concentrating on their application to students.

Racism in Schools

Because of the long history of slavery and discriminatory treatment of non-white people in this country, any treatment that distinguishes between people on the basis of race must withstand the "strict scrutiny" test or be declared unconstitutional.

INTEGRATION

In **Brown v. Topeka Board of Education**[62], the U.S. Supreme Court held that so-called separate but equal schools violated equal protection. Using sociological information on the effects of segregated education on black and white children and on society as a whole to back up its decision, the court overruled for the first time its many decisions upholding the separate but equal doctrine.

Although **Brown** forbade *de jure* segregation, i.e., segregation laid down and officially enforced by laws, it soon became apparent that this was not enough. Segregation still existed, either because court decisions were ignored or because segregated housing patterns created segregated neighborhood schools.

Separate but Equal, 1950 (left), and 1980 (right); Prior to 1954, so-called Separate but Equal schools were legal. During the '60s and '70s 'white flight' to the suburbs brought about a new Separate but (Un)Equal system — wealthy, white suburban schools and poor, largely non-white urban ones.

Later court decisions held that *de facto* segregation, segregation that was not laid down by law yet in fact existed, was also a violation of equal protection.[54] The concept of busing school children to create racial balance was formulated to overcome continued segregation.[55]

Ironically most court ordered busing plans in themselves were racially discriminatory because they called almost exclusively for busing of black children to white schools.[56] The few cases calling for both black and white students to be bused have been overturned on other grounds.[58] Particularly damaging to these cases is the recent Supreme Court decision that for inner-city/suburb busing to be used, a history of *de jure* segregation must be shown.[57] Courts have always been extremely reluctant to require busing between inner cities and suburbs, despite the almost all-white population of the suburbs and high percentage of non-whites in large urban areas.

Although segregation has been outlawed for 25 years now, it is still widespread. U.S. government statistics show that even today a relatively small percentage of schools across the nation are integrated.

Obviously, a Supreme Court decision does not automatically guarantee that a right will be protected.

TRACKING

Even when black and white students attend school together, racism causes unequal treatment in many areas. In our society, schools are set up to serve two main functions: academic (literary, etc.) and social (obedience to rules and authority; learning one's place, etc.) Tracking is a means of classifying students, supposedly solely on academic skills, into college-bound, regular, vocational, or 'basic education' programs. It is not surprising in a racist society to find black students concentrated in basic education programs and underrepresented in college-bound tracks.

Tracking has also been recognized as discriminatory toward poor or 'lower class' people. Of course, in this society where discrimination in housing, schools and jobs has kept a large percentage of black people in lower economic classes, a relatively high percentage of poor people are non-white. So any system of classification that deals out unequal treatment to poor people will also affect non-white people to a great extent.

The District of Columbia school tracking system was declared unconstitutional in **Hobson v. Hansen**,[58] an unusually progressive decision. After finding mostly poor and black students in the lower or basic education tracks, the court said:

"Even in concept the track system is undemocratic and discriminatory. Its creator admits it is designed to prepare some children for white-collar, and other children for blue-collar jobs. Considering the tests used to determine which children should receive the blue-collar special, and which the white, the danger of children completing their education wearing the wrong collar is far too great for this democracy to tolerate. Moreover, any system of ability grouping which, through failure to include and implement the concept of compensatory education for the disadvantaged child, or otherwise fails in fact to bring the great majority of children into the mainstream of public education denies equal education opportunities and thus encounters the Constitutional bar.

"Because these tests are standardized primarily on and are relevant to a white middle-class group of students, they produce inaccurate or misleading test scores when given to lower class and Negro students. As a result, rather than being classified according to ability to learn, these students are in reality being classified according to their socioeconomic or racial status, or, more precisely,

according to environmental and psychological factors which have nothing to do with innate ability."

Tracking not only violates equal protection but due process as well. Placing students in 'slow' or vocational training classes often occurs in the first few years of elementary school, without any participation by parents or young people in deciding which track is 'appropriate.' Students placed in lower tracks usually receive an education substantially different from and inferior to the education received by students in college bound tracks.

In this society the kind of job one gets is often dependent on educational background. Obviously a lower track education can seriously interfere with a young person's present and future life, liberty and property. Therefore students should at least have the right to a due process hearing to determine whether they are placed in the 'correct tracks', with periodic evaluations. But even more than that, tracking in itself, even if it classifies students 'fairly', is harmful and unnecessary in a cooperative learning situation. It is only because we have tracks throughout our entire society that we need them in our schools.

Unfortunately no court has yet held that students are entitled to due process hearings to determine what track they should be in. Courts have held that students may challenge their placement in special schools or classes for disturbed or retarded children,[69] with extensive due process safeguards. Many of the same considerations that caused courts to require due process safeguards in retarded placement cases also exist in the more usual tracking cases. Every school system in the U.S. has a tracking system within it. Find out how it works in your area. What track are you in? If you feel you have been placed in the wrong track, you may want to demand a due process hearing.

NON-ENGLISH SPEAKING STUDENTS

Students who do not speak English, or who speak it only as a second language, are especially discriminated against in the area of tracking and education in general. The black, brown, red or yellow child who doesn't speak English is particularly likely to be placed in mentally handicapped classes or basic education tracks. The U.S. Supreme Court has agreed that the failure of a school district to provide English language instruction to its non-English-speaking students is a violation of the Civil Rights Act, which was passed by Congress in 1964 to enforce the rights guaranteed by the equal protection clause of the Constitution.

Although the Supreme Court did not specify what kind of special programs are required, lower courts have ordered the establishment of bicultural/bilingual

One court found no violation of the law when 87 out of 93 students suspended for a racial incident were black.

programs.[70] The federal government now requires bilingual programs to be set up wherever at least 20 students in the school district speak a language other than English as their primary language.

Lawsuits have also challenged the policy of labelling non-English speaking students as retarded and placing them in classes for slow learners.[71] The right to a due process hearing before placement in such classes should especially be demanded when the possibility exists that it is language difficulties that cause the learning problems.

UNEQUAL ENFORCEMENT OF SCHOOL RULES

In theory, equal protection forbids any discrimination in enforcement of school rules.[72] In reality, non-white students receive proportionately more suspensions, expulsions and disciplinary actions than white students. Though they represent only about 30% of total school enrollment, black students account for 45% of suspensions and expulsions each year, and on the average are suspended a full day more than the average for white students.

Courts are divided on whether or not statistics showing disproportionate numbers of black suspensions are enough to support a claim of unconstitutionality. One 1974 case found that "white institutional racism" was the reason for the disproportionate

number of black students being disciplined.[73] The court said that the district had to be more responsive to the needs of black students, and recommended structural changes, including training of teachers, counselors and students to deal with institutionalized racism.

The court's order, however, merely told the school to "review its present program" and "put into effect an affirmative action program aimed at materially lessening 'white institutional racism'."[74]

Other courts have been even harder to convince. In **Tillman v. Dade County School Board**[75] the court was not persuaded to find a violation of equal protection despite the fact that 87 of 93 students suspended for interracial fighting were black. The school's excuse, that blacks are easier to identify, seemed logical to the court. Another court bought a school district's argument that the greater number of non-white suspensions and expulsions was a "fortuitous circumstance."[76]

Despite these depressing decisions, non-white students and communities all over the country are filing class action suits and doing organizing against racially discriminatory discipline policies and practices. Statistics showing too many minority suspensions and expulsions should always be used to help show equal protection violations. But court suits won't be successful without publicity, community education, and organized resistance to these unconstitutional practices.

One possible step is the establishment of student advocacy centers, staffed by trained students and community members to represent students in suspension and expulsion hearings. Such a center could also monitor the school system's disciplinary policies and determine whether or not they are discriminatory. Many school principals are easily intimidated into changing obviously discriminatory practices when they know they are in the wrong — and that they are being watched. One student advocacy center, located in Ann Arbor, Michigan, is currently involved in a class action suit against the public schools for labelling poor and minority students in elementary school "retarded." Although the center started out dealing with the *results* of racism and classism in schools (suspensions and other discipline), it soon realized that attacks had to be made on the *causes* as well.

Much can be done by informed activists without relying extensively on "professionals." Many advocates are students themselves. Student advocates not only help represent other students in individual hearings, but also are direct evidence of students' capabilities. If you are interested in forming an advocacy center, we encourage you to contact the Ann Arbor Student Advocacy Center for more information. (See Bibliography.)

Sexism in Schools

Although women meet the "suspect class" qualifications laid out by the Supreme Court, discrimination on the basis of sex is still not tested by strict scrutiny. Instead, the Court has said it is willing to wait to see the will of the people on the ERA before it makes its final decision as to which equal protection test to use for women. Congress has already passed the ERA; for it to become law it has to be passed by the legislatures of 38 states. As of this writing 35 states have ratified the ERA, but a conservative backlash has developed and the ERA may be rejected. However, the Constitution is supposed to contain protections for people that aren't dependent on the whims of prejudiced individuals or groups, even if they are in the majority. If it had been left up to "the voters," **Brown v. Topeka Board of Education** would probably have been

Racism is Evident in Suspension Statistics

SUSPENSION AS A PERCENTAGE OF TOTAL ENROLLMENT, 1971-72

The racism of the schools is usually evident in disciplinary procedures, such as suspensions. The figures below demonstrate that black students in one urban school district were suspended more than twice as often as white students; Mexican-Americans were also suspended more than whites.

	Suspensions	Total enrollment	Percentage
Blacks	10,050	57,174	17.5
Whites	5,873	85,485	6.0
Mexican-Americans	1,894	15,154	13.2

from the **Inequality in Education** report, Dallas, 1975, p. 37

decided the other way, upholding the "separate but equal" doctrine.

Congress has also enacted laws prohibiting sex discrimination in any federally funded education program. (The programs need not be totally financed by federal funds alone. All public schools are considered federally funded.) Congress also passed Title XII of the 1964 Civil Rights Act (forbidding job segregation on the basis of sex) and the Equal Pay Act (requiring equal pay for women and men doing the same or substantially the same work.) Unfortunately, these laws still leave gaps in equal protection coverage for women.

EXCLUSION FROM SCHOOLS AND COURSES

The exclusion of women from all-male state universities violates both equal protection[77] and Title IX of the Educational Amendments Act of 1972.[78] But in 1971 the Supreme Court affirmed a lower court decision denying men entrance to a state university campus for women.[79] Title IX bans admission bias only in vocational and professional schools and colleges and public institutions: Admission to high schools is not included.[80] However, the equal protection clause has been successfully used in obtaining admission to public schools that offer special programs not offered at other schools.[81] But if a school district maintains two academically superior single sex schools, it may be constitutional to continue the "separate but equal" admission policy.[82] A case challenging separate high schools is moving towards the Supreme Court at this writing.

The use of quotas or different admission standards for women and men violates the Equal Protection Clause.[83] The use of sex quotas also is forbidden by Title IX. Female students have successfully challenged their exclusion from traditionally all male classes like metal, auto, or wood shop, and males have won admission to home-ec under the Equal Protection Clause. So you have both statutory (Title IX) and constitutional (Equal Protection) grounds to support you in a fight for admission to supposedly single-sex classes.

ATHLETICS

An amazing number of cases have been filed by young women who are demanding the opportunity to participate in school athletic programs. State athletic association rules forbidding boys and girls from playing on the same team or against each other have been overturned because they violate the equal protection clause.[84] Individual school district policies have also fallen by the wayside. Especially where no other alternative competitive sports program for women exists, courts have ordered that women have a chance to try out for the "boys" team and compete if they have the skills.[85] Title IX provides that women may not be excluded from any athletic program except for contact sports and competitive skill teams. In competitive non-contact sports Title IX requires that women be allowed to participate on the boys' team if there is no comparable girls' team. Some females have won the right to play on boys' football teams where no girls' football was offered at their school.

A few courts have taken the final and necessary step of granting women the right to compete on boys' teams even in contact sports and even when there are separate girls' teams in the same sports.[86] Very few schools provide girls' athletic programs that are even slightly comparable to boys' programs, if they offer girls the opportunity to play in a particular sport (like football) at all.

Unfortunately, some courts continue to justify exclusion of women from boys' teams on the basis of worn-out, unsupportable myths. For example, the Supreme Court of New Jersey denied young women the right to play on the boys' tennis team because of the psychological damage that boys would face if beaten by a girl![87] A few courts have rejected this argument,[88] noting the discrimination against female athletes even where separate teams exist because of the generally inferior coaching, equipment and access to facilities.

Some states have enacted legislation of their own providing greater access for women to athletic programs than is granted by either current interpretations of equal protection or Title IX. Several states have passed their own ERA's, which have then been used as a basis to allow young women to participate in sports of all kinds without regard to whether or not separate teams are available. (Check your own state constitution and laws to see what rights they give you to participate in your school athletic programs.)

MARRIAGE, PREGNANCY, PARENTHOOD

Marriage: As already mentioned, young people have no absolute right to marry without parental or state consent. But once you are married, both equal protecton HEW interpretations of Title IX guarantee your right to remain in school as a regular student.[89] No marriage cases have been brought to court under Title IX, but it seems clear that no discrimination against married students will be tolerated, at least as far as regular school classes are concerned. Equal protection cases have held that married students have an equal right to education because there is no rational basis for excluding married students; and it's an infringement on the fundamental right to marry, and exclusion from the important right to an education.

Most courts have not allowed school systems to set up special requirements that married students must

"I speak two lenguages, but she thinks I'm stupid." Institutional racism directed against students who speak English as a second langauge is widespread.

meet before they may participate in extracurricular activities.[90]

HEW regulations also forbid discrimination or exclusion of students who are pregnant. Pregnant students may not be forced to attend special or night classes but instead must be allowed to fully participate in school classes and extracurricular activities, including graduation services.[91] Pregnant women may request a separate program if they wish, and the school system must provide such a separate program, equivalent to the regular school program.[92] Students with children also have the right to stay in school if they wish, even if they are unmarried parents.[93] Some courts have upheld the exclusion of students with children from college dormitories (even from married student housing!)[94] But in general if you are excluded from participating in either regular or extra-curricular school activities because of your pregnancy or status as a parent, you should be able to sue for reinstatement and possibly even damages. (See Remedies.)

Wealth Discrimination

A state may not deny poor children the right to attend public school, but if it educates all of its children to a certain extent, it is legal (under the U.S. Constitution) for some districts to provide more benefits than others. Typically, students in wealthy areas have schools that are better funded than those in poor areas. However, some state constitutions have been interpreted to prevent such discrimination between school districts, and there are a great number of cases now in progress charging that unequal funding for different districts within the same state is unconstitutional under state constitutions.

Most federal courts have held that special fees for books, materials or other educational rights and privileges are unconstitutional because they deny equal access to the poor.

Age Discrimination

YOUTH

States are recognized as having the power to set age qualifications for: voting, serving on a jury, marrying without parental consent, buying, possessing or consuming alcohol or tobacco, making contracts, wills and inheriting, buying and controlling property, working for wages, getting a driver's license, attending school, receiving juvenile court treatment, using the courts, and receiving medical care without parental consent.

Usually the state allows anyone at or over the 'age of majority' (the age at which you become a legal adult) to control their own lives in all of the above areas. Some states set higher age limits in certain areas, especially in the area of alcohol. Federal law mandates that 18-year-olds and over must be allowed to vote in all state and federal elections. Most states now set age 18 as the general, all purpose age of majority. Check your own state laws to see exactly what age limits are set.

Work: Child labor laws prohibit children under a certain age (usually 14) from working in most occupations, and have been upheld by courts as "reasonable." *Age is not a suspect classification.* When a child is working in an industry covered by minimum wage legislation, she is entitled to receive a "fair" wage (at least the state minimum wage). Some states allow employers to establish wage scales paying minors, students, learners and apprentices less than other workers. Also, many jobs young people do (caddying, farm and domestic work, newspaper delivery) are excluded from minimum wage coverage. Many young people are part time workers and so are denied fringe benefits available only to full time workers.

If you are injured on the job, you are entitled to

One court said girls couldn't compete with boys because it might damage the boys' egos if they were defeated — but nowadays courts are moving more in the direction of equality.

receive workers compensation benefits. If you are working at a job where you have been employed illegally (for example, on a hazardous job where legislation forbids the employment of minors) you may be entitled to extra compensation.

You can collect unemployment benefits if you meet statutory qualifications. Many states deny benefits to part time, after school or summer vacation employ-

Students & Parents Fight Discrimination

Passing a good law is only one step in the struggle for social justice as these two articles show. It took a seven-year struggle to sexually integrate the schools in Amite, Mississippi. And nationwide, most school districts were still ignoring Title IX four years after it became law.

In 1969 a Federal Appeals Court ordered an end to the segregated school system in Amite County, Mississippi. Local racists were shocked and sought a way to get around the court order. They came up with a plan to segregate the schools by sex instead of race, and the court accepted their plan. (Incidentally, Attorney General Griffin Bell was one of the three judges on the panel that agreed to the plan.) The sex segregation was supposed to be an "emergency measure to stabilize the educational process." However this "emergency measure" has been reapproved every year since.

The Southeastern Public Education Program (an action group sponsored by the American Friends Service Committee) looked into the Amite schools and found that the system violated both the Civil Rights Act and Title IX (the government's rules prohibiting sex discrimination in schools). They issued a report documenting the fact that single-sex schools in Amite County, as well as in two parishes in Louisiana were set up "in a classic attempt to continue to separate blacks and whites."

Roosevelt Steptoe, an early opponent of the plan to separate Amite students by sex, said "A fear of throwing those young ladies in with those black boys prompted the sex-segregation system."

The NAACP first attacked the sex segregation plan in August, 1970. At that time the U.S. District Court ruled the plan had been based on "solid educational purposes" and was not based on racism. Black students and parents knew better, however.

Seven years later they felt they had the power to force change. When school started in August, 1977 most of the county's 2,000 black students boycotted in a mass protest of the system.

Backed by the NAACP in Amite County, the boycott continued into the fourth week of classes, virtually crippling the county school system, which is predominantly black.

The school board, which has only one black member in a community where the schools are 80 percent black, tried to ignore the boycott and hope it would go away quietly. Superintendant of schools Maurice Forman said the schools would continue to function under the separate system established in the 1969 court order until another court forced them to change. "We provide a good education and an equal education for everybody. We like the setup."

Under growing pressure from the boycott a three judge panel finally ruled on September 21 that they didn't like the 'setup' in Amite and ordered sexual integration of the schools.

Seven years of preparation, solid evidence against the schools, student-parent solidarity, and 2,000 students who were willing to take a risk to bring about change were all that was needed to win the struggle.

• FPS #60

ees, and to all children under age 14.

Of course, you have to pay taxes on your earned income like everybody else — if you can manage to earn enough!

Contracts: Young people have no right to make contracts. Most contracts entered into by young people can be cancelled by the young person. In other words, the young person can enforce the contract against the adult or business, but she can cancel the contract if the company tries to enforce it against her. Of course, this makes everyone reluctant to enter into contracts with young people. Contracts for "necessities of life," however, are valid against a young person and her parents. If you purposefully misrepresent your age, and it was reasonable to believe you were "of age," your right to disaffirm the contract may dissolve.

Some contracts entered into by young people are completely void from the moment they are made, including leases and under-age marriage contracts; others are fully binding (for example, when a minor enlists in the armed forces, signs a driver's license, or enters into a marriage contract when old enough under state law.)

Minors can "disaffirm" — or break, contracts with adults unless they falsely represented themselves as adults.

Wills and Property: Minors may not make legally binding wills, but they may inherit. They may own property, but may not rent, sell or manage it on their own.

Access to Courts: Young people may not sue in court under their own name. They must have an adult 'next friend', not necessarily their parent or guardian. Only 13 states allow young people to sue their parents for negligent or injurious conduct. If you are sued, the court will appoint a guardian to act for you.

Status Offenses: Status offenses are those acts that are crimes for children but not adults (like truancy, running away, incorrigibility, undesirability, and being "beyond the control" of your parents). The punishment of young people for status offenses has not been held unconstitutional, though it discriminates against them solely because of their age.

Young people aren't even guaranteed as many criminal due process rights in status offense cases as they are in juvenile delinquency proceedings. You do have a right to counsel, but you don't have to be proven guilty beyond a reasonable doubt. Your "guilt" need only be shown by a "preponderance" of the evidence — even though you can be committed to an institution for a status offense just as you can for delinquency.

Curfew: Many cities have curfews, forbidding people younger than a certain age from being on the streets at night (or specified hours). Curfew laws should be unconstitutional. They blantantly violate rights to equal protection; due process (vague, or beyond the role of the police power); privacy; and the First Amendment. Loitering and vagrancy laws, and curfews applied to adults, have all been held unconstitutional, for all the above reasons. Unfortunately, courts are divided as to the legality of child curfew laws.

Courts that have overturned curfews have rested on a variety of grounds. In California a court said that it was a violation of the child's right to liberty and freedom to travel. The Supreme Court of Washington held that, "mere sauntering or loitering on a public way is lawful and the right of any man, woman, *or child*." In Seattle, curfews were held to exceed the lawful scope of police authority because they didn't distinguish between conduct calculated to harm and innocent conduct. Other courts have mentioned the unconstitutional usurpation of "the role and function of parents," in deciding where their children will be.

Of course, each curfew law is looked at individually to determine its constitutionality. The U.S. Supreme Court declined to review a lower federal court decision in Pennsylvania upholding a curfew law. This law was less restrictive and less arbitrary than most curfew laws but it's still shocking that young people can be forced off the streets just because they're young!

Probably the best way to fight curfew laws is by direct action, not court fights. Get lots of kids to congregate somewhere after curfew hours — with parents if they'll support you. Have a demonstration at a city council meeting to protest the law. Think of other ways to get your message across. It's worked before in other cities, like Ann Arbor, Berkeley and Madison.

If you've got parents on your side, you've got a better chance. And this is an issue that might be easy to convince your parents to get upset about. After all, under many curfews, you can't even go out at night with your parents' permission. Lots of parents don't like that. They want to be the only people to tell you what to do!

Alcohol, Tobacco & Their Establishments: As is well known, young people can be prohibited from buying alcohol or tobacco, or going to bars. Once you reach a magic age — presto — you are supposed to be able to handle your liquor, nightclubs, and tar and nicotine! Not realistic, nor reasonable, but until the whole concept of childhood is changed, that's the way it's going to be.

OLDER PEOPLE

Age is usually considered to be a "natural" classifica-

No Place on School Board Ballot for Young People

Two of the most important rights that young people are denied are the right to vote and run for public office. Youth Liberation ran 15-year-old Sonia Yaco for school board in 1972, and launched a legal battle to get her on the ballot. We lost, but still ran a spirited campaign.

Sonia was more qualified than any of the adult candidates. She spent every day in a school where her life was controlled by School Board decisions. She was an elected member of the Student Board, an organizer of the Ann Arbor Student Union, and a worker for Youth Liberation and **FPS**. She was nominated as the candidate of an "adult" political party, the Human Rights Party of Ann Arbor.

Sonia decided to run for office to make people aware of the nonexistent role that students play in governing themselves. "I'm running to prove a political point," she explained, "the Board of Education controls the lives of students and therefore students should have a voice on the School Board."

When Sonia filed her nominating petitions with the city clerk she had three times the number of signatures required. A few days later a letter came from the Office of Operations of the Ann Arbor Public Schools stating that her name could not be placed on the ballot, solely because she was not yet 18 years old.

The Human Rights Party and Sonia filed suit immediately. Five days before the June 13, 1972 election, District Court Judge Lawrence Gubow refused to grant an injunction which would force the School Board to put Sonia's name on the ballot. She ran a strong write-in campaign anyway and received an impressive 1,363 votes.

Sonia's case rested on two main grounds. The first is that "she and all minors similarly situated suffer from an invidious discrimination as a result of the operation and enforcement of a state law preventing them from aspiring to public office, especially to Boards of Education, regardless of their individual abilities and qualifications. They consequently are being denied equal protection of the laws guaranteed to them under the 14th Amendment to the U.S. Constitution." Her complaint noted that "there is no more basis for distinguishing between people on the basis of age in considering qualifications for candidates than there is on sex, race, ethnic background or identification as a student."

The second basic claim of the complaint was that the Human Rights Party "and its membership are being denied First Amendment rights by the operation and enforcement of state laws preventing persons under 18 years of age from seeking public office... The party and its membership have a right to have their views expressed through qualified and able candidates chosen by them to represent the party in elections."

The complaint unearthed a couple of interesting sidelights. One is the fact that an institutionalized adult with a mental age of 3 could be a candidate — while a qualified 15-year-old could not. Another is the fact that, under Michigan law, Sonia **could** run for the governing board of a state university (but **not** for her home town school board.)

The court could have judged this case on two possible grounds. First, does the law in question rest on grounds relevant to the achievement of a "valid state purpose?" Second, and much harder to prove, is whether the law in question is "necessary to promote a compelling state interest."

The "compelling state interest" test was not used. The court based this on an opinion by Supreme Court Justice Stewart who said "to test the power to establish an age qualification by the 'compelling interest' standard is really to deny a state any choice at all, because no state could demonstrate a compelling interest in drawing the line with respect to age at one point rather than another." **Indeed!!!**

tion, and discrimination on the basis of age need only meet the rational basis test. Most courts feel that age alone justifies discriminatory treatment.

Federal law prohibits wage or employment discrimination on the basis of older age. That doesn't mean older people get all the jobs they're qualified for — discrimination goes on, often regardless of the law. Forced retirement is still constitutional, though it deprives a class of people the right to work regardless of their own capacities and capabilities. The myth about all older people being senile and/or physically inactive not only leads society to kick them out of the mainstream of labor and also allows them to be committed to so-called "rest" or "nursing" homes.

For many years older people were shunted off to these institutions without any opportunity to protest. Today courts are beginning to demand due process rights for all people who are committed through the court system. These rights include the right to a hearing where all sides may present evidence for an impartial hearer to determine "feeblemindedness" or inability to care for oneself.

A. See page 38 for the 14th Amendment.

in Ann Arbor, Mich. (or Anywhere Else)

So, on May 11, 1973, the Federal Three-Judge Panel used the "valid state purpose" test to rule against Sonia and the Human Rights Party. The "valid purposes" they dug up are two. First, they said that "excluding minors under the age of 18 from a place on the Board of Education assures some measure of maturity on the part of board members." Second, "the State has an interest in assuring that its school board members will have reached the age of majority in order to have the legal capacity to transact the business of the board, which may include signing contracts . . ."

Sonia's case was immediately appealed to the Supreme Court of the United States. Many months later the Supreme Court refused to hear the case and affirmed the judgement of the lower court.

Putting forth fancy reasons just adds to the insult. Democracy means "government by the people" but people under 18 can't participate. Only two conclusions can be drawn — either this is not a democracy, or human beings under age 18 are not real people. "Democracy" is a complete sham when nearly one third of the people aren't allowed to participate. Young people are kept in an intolerable political position of powerlessness both in regard to our own lives and to society as a whole. Because of her age Sonia couldn't even file suit on her own behalf. Suit had to be filed "by her next friend," who was her adult campaign manager.

As an appendix to her case, Sonia's lawyers included the Report of the Michigan Governors' Special Commission on the Age of Majority. The Commission found that the legal age of maturity has never been based on "maturity." Instead, the age of majority rose to 21 years in England mostly because of the great increase in the weight of arms, knee-length mail shirts, shields, etc., as well as the longer training and increased physical requirements for soldiers demanded by William the Conqueror. Before this time the British, the Romans and the "barbarians" had always granted full adult rights somewhere between the ages of 13 and 15.

The report also noted that, according to all the intelligence tests used in the U.S., "mental age continues to grow throughout childhood, but reaches its maximum in early adolescence, ages fourteen to fifteen."

Even if Sonia and all young people were allowed to run for school boards they would most often lose (unless young people were also allowed to vote). If they did win, they probably couldn't change the schools much because their voice and vote would be drowned out by the conservative majority of board members.

The time of change in the status of young people can come only when we ourselves, both within and outside the schools, organize on a day-to-day basis to gain our human rights and control over our education.

• FPS #35

Ageism Costs Landlord $4000

A San Francisco landlord has been fined $4000 for discriminating against children. The landlords, Linda and Richard Hague, co-owners with Stephen Messina, agreed to pay the fine when they were cited with a long term violation of a landmark 1975 city ordinance forbidding most San Francisco landlords from discriminating against families with children.

"The settlement is believed to be particularly significant in that it marks the first time in the U.S. the landlord has been fined for discrimination against children," said Assistant District Attorney David Moon.

The notices for the apartment had read, "No kids, dogs."

FPS #60

8.

"YOU'RE SUSPENDED!"

THE RIGHT TO DUE PROCESS

Due process" is not as difficult to understand as it may seem. Basically, the Constitution[4] requires that government agencies, including schools and juvenile courts, treat all people fairly when those agencies are considering depriving you of your "life, liberty or property." The only way to ensure that you are treated fairly in those situations is to have a *set procedure* that the government must follow before it can deprive you of your rights. The act of going through those procedures is a process. And all citizens are due (or owed) the right to that process. For example, you can't be kicked out of school without first receiving a hearing — a **due process** hearing. So, due process simply means that if the state is going to take something from you, you are due (or entitled to) a process where they explain their reasons and you present your objections.

Schools & Mental Institutions

You are protected from loss of life, liberty, or property due to government action under the Due Process clause. Principals, teachers, school board members, and employees of public schools and mental health facilities are all government employees, and therefore any action taken by them that threatens you with loss of life, liberty, or property must meet the requirements of due process. As you have seen, due process in criminal prosecutions is basically a question of fairness. It's the same in civil matters. In this section we discuss your due process rights in the two most important civil institutions that affect young people's lives: schools and mental health institutions.

Schools: In **Goss v. Lopez**[5] the Supreme Court held that even though the right to an education is not a federal constitutional right, it's a privilege that cannot be denied or taken away without due process of law. **Goss v. Lopez** involved students from different high schools in Columbus, Ohio. In 1971 student demonstrations were taking place all over the country. Columbus was no exception. Hundreds of students were suspended from their respective high schools for participation in demonstrations over a two month period. Nine of those students sued school officials for violation of their due process rights.

The lower court held that their suspensions without even minimal hearings did violate the Constitution. The school administration appealed the lower court's ruling that schools had to meet "minimum requirements of notice and hearing prior to suspension, except in emergency situations," even in suspensions of less than ten days.

The U.S. Supreme Court upheld the lower court's decision. Although the Constitution doesn't guarantee a right to an education, once a state provides public education it may not disrupt or take away that education without providing due process. In short suspensions (ten days or less), written or oral notice of the charges must be given to the student. If the charges are denied, the school officials must give an explanation of their evidence and the student must get a chance to tell her side. "Adequate notice of the charges," means more than a vague note suspending you for "breaking rules," or "misconduct." Except in cases involving violence or real danger to persons or property, this informal hearing must happen before any suspension is imposed. Even in instances where violence is involved, the hearing must take place within 72 hours of the suspension.

The Court has held that for most of these suspension hearings, the school doesn't have to allow you to have a lawyer, or to cross-examine witnesses or call witnesses on your behalf. However, we recommend that you bring an attorney or student advocate with

Students who are disciplined for political disruption may not receive harsher treatment than those who are disciplined for other reasons.

you, especially if you are not given a hearing until after your suspension. When you have somebody with you, there's less chance that the principal will try to walk all over you.

The Supreme Court left open the possibility that some formal due process requirements may be necessary in "unusual situations" — suspensions of more than ten days, or expulsions. The Court favorably noted a lower court decision dealing with the rights of expelled students, requiring stricter due process safeguards.[98] If you are suspended for more than ten days or expelled, you should demand written notice of all charges and evidence against you; an impartial hearing officer; an opportunity to question your accusers and present your own witnesses; the right to bring a lawyer or student advocate; and a written decision based only on the evidence from the hearing.

If the decision goes against you, don't hesitate to appeal to higher school authorities or courts. Any suspension that didn't meet the requirements of due process is invalid and may not remain on your school records.[99] You may even be able to get some money out of your principal! (See Remedies section.)

Lower courts have required due process hearings for other disciplinary actions, including disciplinary transfers to another school or night school;[99] bans from participation on athletic teams or other school activities;[99] and placement in special education classes.[100] One court held that students are entitled to a hearing before their First Amendment rights are restricted. The case involved a principal who censored an article he considered libelous. The court said before a student newspaper is banned for libel, the principal must make a fundamentally fair and reasonably complete investigation to determine whether the material is legally libelous.

Due process also means that severity of "punishment" must be somewhat related to the "crime." Serious punishment can't be imposed for minor rule-breaking;[101] nor can schools punish one class or group of students more harshly for the same offense (see Equal Protection section).

Due process also requires that rules be fair and clear. Many cases have been heard on the question of rules, and the two described below explain how most courts feel.

Gregory Myers was suspended from his Arcata, California high school because he had long hair. According to the vice-principal, Myers was in violation of a school policy which forbade, "Excessive tightness in clothes, as well as extremes in shirt tails, and similarly, extremes in hair styles..."

The California Supreme Court said that it felt long hair and beards were protected as symbolic speech, and that the Arcata rule was too vague. It didn't discuss what, in fact, was too long. It only talked generally about "extremes." The court said:[102]

"A 'law' (or school code) violates due process 'if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits or leaves judges or jurors free to decide, without any legally fixed standards, what is prohibited and what is not in each case."

In a similar case,[103] Dan Sullivan and Mike Fischer of the Sharpstown (Texas) Junior/Senior High School were expelled for publishing an underground newspaper. The rule under which they were expelled stated:

"The school principal may make such rules and regulations that may be necessary in the administration of the school and in promoting its best interests. He may enforce obedience to any reasonable and lawful command."

According to the principal, publishing an underground newspaper was not in the best interest of the school. Fischer and Sullivan said their suspension was unconstitutional under the "void for vagueness" doctrine. Basically, this doctrine is used to determine whether a rule or law is: (1) overbroad, and; (2) too vague. To determine whether something is overbroad, the Court asks, "Could a reasonable applica-

tion of its sanctions include conduct protected by the Constitution?" And to determine vagueness, the Court asks if the rule is "so vague that people of common intelligence must necessarily guess at its meaning and differ as to its application."

Applying the "void for vagueness doctrine" the Court found the Sharpstown rule both vague and overbroad. Students who are facing school rules that prohibit certain kinds of activities might want to keep these cases in mind. Many school rules and regulations will not stand up to the overbroad or vagueness tests.

Mental Health Institutions: The due process rights of young people in mental health institutions are unclear. Thirty-nine states currently allow parents to commit their children without the benefit of a hearing. A Pennsylvania court recently decided that children should have full hearings with the right to counsel before they could be placed in a mental hospital.[104] The U.S. Supreme Court heard an appeal in the case but sent it back to be decided again.[105] The Court has now taken a Georgia case that raises many of the same issues, but the case is undecided at this writing. Currently most states allow parents or guardians to commit their children to mental hospitals without any kind of hearing to determine if that's really where the young people belong.

Many young people are committed for minor drug use, or sexual activity (especially homosexuality). If your parents or guardian try to put you away, that may be the time for you to find a guardian who is more receptive to your ideas and lifestyle and become officially separated from your parents. Or you may want to become a legally emancipated minor. In most states to become emancipated you must show in court that you have a job and are capable of supporting yourself; you have a place to live and you're making regular rent payments; and you remain in school and your schoolwork isn't harmed. You really need a lawyer to take advantage of either of these two ideas.

If anyone tries to put you in a mental hospital against your will, demand the due process rights laid out in juvenile justice matters. (See below.) Try to find the most respectable person you know to stand up for you against your parents, guardian, or whoever is trying to commit you. Contact Legal Aid, the ACLU, the National Lawyer's Guild, or any other concerned attorney or advocate to represent *your* interests. In these matters you can't depend on your parents or the courts.

Juvenile Court

For adults involved in criminal prosecutions, due process rights ensure that they can't be convicted twice for the same crime; they can't be forced to testify against themselves; they must have a speedy and public trial by jury; they must be informed of the charges against them as well as the identity of witnesses who will testify against them; they have the right to hear the testimony and cross-examine any witnesses, and to call witnesses in their defense; and they must be guaranteed the assistance of an attorney to prepare and present their defense, whether they can afford it or not.

Juveniles who are caught up in the juvenile justice system are not granted the same due process rights as adults. The excuse given for the lack of constitutional protection is that juvenile court proceedings are not "criminal" or "punitive." Juvenile courts supposedly exist to hand out "guidance" and offer juvenile law-breakers "rehabilitation" instead of punishment. The Supreme Court has had several opportunities to decide that young people are entitled to full due

Student Rights Worth $1 Says Supreme Court

A few years ago the U.S. Supreme Court ruled that students had to receive a hearing and notice of the charges against them before being suspended. Last March they made a mockery of that decision.

Sixth-grader Silas Brisco was suspended for 17 days because he refused to remove an earring from his ear. Jarius Phiphus, a ninth-grader, was suspended from school for eight days for smoking on school property. Neither of them had the opportunity to present their point of view before they were suspended.

The Federal Appeals Court ruled that students deprived of hearings before suspension or expulsion could sue for substantial damages. The Supreme Court overturned that decison and said that students could only receive $1 in damages.

The opinion, written by Justice Lewis Powell, set up three categories concerning the liability for damage suits against school officials in such instances. If the student can prove only that her constitutional rights were violated, only "nominal" damages can be awarded. If it can be proved that school officials maliciously disciplined the student, greater damages might be warranted, said Powell.

Police have the right to question minors without the presence of an attorney until a formal delinquency petition has been filed.

process protections, but instead the Court has only grudgingly expanded the scope of due process protection for juveniles piece by piece. As usual, it's all "for the good of the kids." Also as usual, it really hasn't worked out that way. Let's look at each due process right separately to get a good understanding of what you can expect if you become involved in a juvenile court proceeding.

"FUNDAMENTAL FAIRNESS"

In the cases it has considered, the Supreme Court has determined the due process rights of young people based on the legal concept of "fundamental fairness." Fundamental fairness means that there must be a hearing to determine a good reason or "probable cause" for holding a juvenile in detention before 'trial' in juvenile court.[106] The Supreme Court has held that fundamental fairness requires a hearing, the assistance of a lawyer, and a statement of the reasons if a juvenile court waives its jurisdiction over a juvenile and orders her to face trial in adult court.[107] The Supreme Court has also said that the government must prove guilt beyond a reasonable doubt in cases determining "delinquency" for acts of young people that would be criminal if committed by an adult.[108] (However, for status offenses juvenile courts now only need to prove guilt by clear and convincing evidence or a preponderance of the evidence.) As we survey the due process rights of young people, remember that the rights you do have are not based on an equal protection argument (courts don't accept the idea that young people should receive equal due process rights with adults). Instead, your rights are based on what judges feel is "fundamentally fair."

THE RIGHT TO BE INFORMED OF THE CHARGES AGAINST YOU

In re Gault[109] is the most important Supreme Court case dealing with criminal due process rights of young people. Fifteen-year-old Gerald Gault was taken into custody after a neighbor told the police that Gerald had made obscene phone calls to her. But neither Gerald nor his parents were told why he was taken into custody. The complaint filed in court made no reference to the factual basis of the charge of delinquency (that is, it didn't specify *why* Gerald was about to be disciplined).

At the hearing the complaining witness (Gerald's neighbor) wasn't present and no one who testified was put under oath. The juvenile officer admitted that Gerald had been questioned without either his parents or a lawyer being there, and without either Gerald or his parents being told of the right to remain silent and be represented by a lawyer. The juvenile court committed him to the Arizona State Industrial School until he reached the age of 21, for an act that would have netted him a maximum of two months in jail if he had been an adult.

The Supreme Court held that in juvenile delinquency proceedings that may lead to commitment in a juvenile home or other state institution, the young person must receive at least minimal due process safeguards, including:

- prior written notice to the young person and her parents of the specific charge or factual allegations so that an effective defense can be prepared;
- notification of the right to get a lawyer or be appointed one if unable to afford one;
- application of the privilege against self-incrimination;
- the opportunity to hear the testimony of the witnesses against her and to cross-examine those witnesses under oath.

The Supreme Court limited **Gault** to the **adjudicatory** trial phases of the juvenile justice system. It specifically excluded preliminary proceedings or **post-adjudicatory** stages from its opinion. Nonetheless, **Gault** has affected several of the most important aspects of police treatment of juveniles.

Though **Gault** demands that juveniles be told the specific charges against them before the hearings begin, lower courts have not exactly required strict

adherence to this ruling.

In **Henderson**[10] the court held that the state's failure to give details about the complaint in the delinquency petition wasn't enough to throw the case out of court. The court said the defense could have filed a motion asking for more details. The court also distinguished this case from **Gault** because it dealt with a "status offender," not a juvenile who had committed acts that would have been criminal if committed by an adult. The young person in **Henderson** was allegedly "wayward" and "habitually disobedient." Somehow it doesn't seem very fair or logical to give less due process protection to a young person who hasn't really broken any criminal law than to someone who has, especially when the end result can be the same — commitment to a juvenile institution.

THE RIGHT TO A LAWYER

As noted above, juveniles now have the right to a lawyer — and the right to be informed of that right at

Important Differences Between Adult & Juvenile Courts

When an adult violates a law she commits a **crime**. She is **arrested**, **charged**, and given a **trial**. If she is found guilty, she can be sent to **jail**. The purpose of the trial is solely to determine if the defendant is guilty, and the purpose of prison is largely punishment, though there is some talk of rehabilitation.

In juvenile court there is a different philosophy. The sole purpose of juvenile court is supposed to be rehabilitation. Because of this different philosophy, the social workers who run the juvenile court system developed a different set of words to describe juvenile crime. In addition, there are two categories of "crimes" that juveniles can commit — acts of **delinquency** and **status offenses**.

STATUS OFFENSES AND DELINQUENCY

An act of delinquency is when a juvenile does something that would be a crime if they were an adult, such as robbing the corner store. A status offense is an offense that applies only to young people. For example, juveniles can be 'arrested' for truancy or running away. Those are obviously not crimes for adults. (For more about status offenses, see the rest of this chapter.)

Therefore, when a juvenile breaks a **law**, she is considered **delinquent**. When she violates the juvenile code (all those things that are crimes only for young people) she is a **status offender**. Treatment is usually the same for both delinquent youths and status offenders. Instead of being arrested, juveniles are **brought into custody**; and instead of being charged with a crime there is a **petition** filed with the juvenile court saying what they have done wrong. Since the supposed purpose of the juvenile court is to rehabilitate the young 'offender', she isn't found **guilty**. Rather, she is found to be "in need of rehabilitation," or simply, "delinquent." Finally, juveniles aren't really sent to "jail." They are sent to **juvenile homes**.

As everyone knows, all of the above is really different words for the same thing. There is virtually no difference between being "brought into custody" and being "arrested." And juvenile homes are basically prisons.

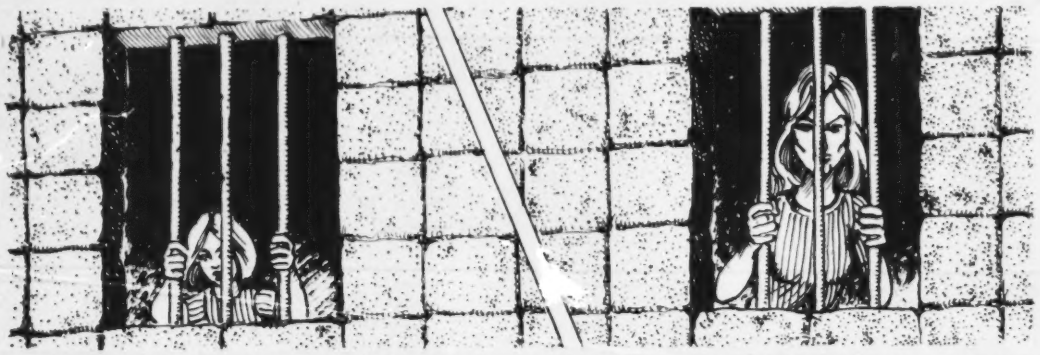
"There is virtually no difference between being 'brought into custody' and being 'arrested.'"

It's because the two processes are so similar that the U.S. Supreme Court has begun to expand the rights of juveniles. After all, if juveniles face virtually the same punishment as adults, the court reasons, they should have some of the same legal protections. Unfortunately, there is still a long way to go in that process.

WAIVING JURISDICTION/PRE AND POST ADJUDICATORY

When a juvenile is sent to a juvenile home, she can only stay there as long as she remains a juvenile, usually until age 18. Therefore, the juvenile courts sometimes don't want to try a young person who is charged with committing a serious crime such as murder at age 16. If she is found guilty, she may only serve a few years. To solve that problem, the juvenile courts are allowed to 'waive jurisdiction'. That is, they are allowed to say, "We don't want this case. This person should be tried in adult criminal court, as if she were an adult." If the juvenile is 'waived' to adult court, she then receives the full legal safeguards given to adults. But she can also receive adult penalties (including the death penalty in some states).

In order to waive jurisdiction, the juvenile court must hold a hearing to consider the facts. This is called a **pre-adjudicatory** hearing. The adjudicatory (a-JOO-di-ca-tory) stage of juvenile proceedings is the actual trial part. Pre-adjudicatory is anything that happens before the trial, such as deciding what evidence can be admitted; post-adjudicatory means after the trial, and includes things like sentencing.



Juvenile home (left), and adult prison (right); there isn't much difference in the institutions, but juveniles have fewer legal rights — because they are supposedly being "rehabilitated," not punished.

least by the time of the adjudicatory hearing — in any proceeding that can lead to commitment in a juvenile institution. If the young person or her parents can't afford to pay for a lawyer, she has the right to a free court lawyer. However, this only applies to the trial stage of a juvenile proceeding. The Court has not said whether juveniles have the right to a lawyer in pre-trial stages. In **Kirby v. Illinois**[111] the Court narrowed the due process rights of adults by ruling that the constitutional right to a lawyer didn't apply until criminal proceedings were instituted. It further said that the rule excluding some evidence obtained in the absence of a lawyer didn't apply if it was obtained before the person had been indicted or otherwise formally charged with a criminal offense. Since juveniles aren't officially charged until the filing of the formal petition in juvenile court alleging acts of delinquency, this case will undoubtedly encourage questioning before charges have been filed so as to avoid the necessity of allowing a lawyer to be present. The police always prefer to question you without a lawyer present so they can trick you into confessing — even if you're innocent.

Before **Kirby** it was generally assumed that juveniles had the right to be represented by counsel at line-ups in cases where they were being tried for acts that would have been crimes if committed by an adult. But several lower courts have already held that pre-indictment identifications in a lineup are admissible as evidence even in juvenile court and even when no attorney was present at the lineup.[112] At this point the young person's right to counsel before trial is in serious jeopardy.

THE RIGHT AGAINST SELF-INCRIMINATION

The early Supreme Court case of **Haley v. Ohio**[113] held that the Fourteenth Amendment prohibited the use of the coerced confession of a 15-year-old defendant in state criminal court. **Gault** extended the protection against self-incrimination to juvenile court proceedings determining delinquency if those proceedings could lead to confinement in a juvenile institution. But **Gault** applies only to the trial stage of such proceedings. It is not clear whether the same rules which protect adult defendants from police who violate their right against self-incrimination also apply to young people. In **Miranda v. Arizona**[114] the Court laid out warnings that must be read to an adult charged with a crime before questioning her. Those warnings include the right to remain silent and to have an attorney. In adult court if the police neglect to give those warnings before questioning, any confession or direct evidence they get from the questioning isn't admissible in court. The Court held that the right against self-incrimination doesn't mean anything unless you are first informed of that right.

Using the Supreme Court's reasoning in **Gault**, the **Miranda** warnings should at least apply if a juvenile is tried in adult criminal court or if the juvenile may be committed to a state institution for acts that are criminal if committed by adults. Unfortunately, that's not the way most courts see it. A California court has held that, even in a criminal proceeding, a juvenile can make a valid confession without the presence of counsel or a 'responsible' adult. That court said that whether or not the juvenile was read her legal rights before questioning is only *one factor* to be considered, and not conclusive as to whether or not the confession should be admitted in court![115] This is blatant discrimination against young defendants.

Since **Gault** applies to the actual judging stage of juvenile proceedings, it should follow that juveniles have the right to remain silent during their trial without any comment being made on this silence by the other side. Even if courts eventually decide juveniles have that right, many juvenile court judges will probably ignore it. Juvenile courts often rely heavily on the testimony of police officers or com-

plaining witnesses, without giving much regard to the young person's story. If a young person refuses to testify, however, those same judges may automatically assume the young person is guilty. In this area, you're hanged if you do and hanged if you don't.

THE RIGHT TO A JURY TRIAL

An overwhelming majority of states do not provide for trial by jury for juveniles unless the juvenile is being tried as an adult in criminal court. Twenty-nine states specifically exclude jury trials for juveniles; ten state statutes expressly provide for them.

The Supreme Court has already decided that a jury trial is not constitutionally required for state juvenile delinquency proceedings, either for status offenders or for young people who commit acts that would have been criminal if committed by an adult.[116] The Court based its decision on "fundamental fairness" and the fear that requiring jury trials would turn juvenile proceedings into a fully **adversary** process with "delays" and "excessive formalities" that would interfere with the so-called rehabilitation.

The Court admitted that the juvenile court system has often failed in its supposed goal of rehabilitation. But instead of facing the reality of juvenile courts and the already adversary nature of juvenile proceedings, the Court attempted to turn back the hands of time and denied young people the right to a jury trial.

The only sure way to get a jury trial is to be arrested in one of the states that guarantees you that right, but even there you can't get a jury of your peers, because you've got to be at least 18 to be a juror in the vast majority of states.

THE RIGHT TO CONFRONT YOUR ACCUSER

As noted above, **Gault** guarantees the right to confront witnesses against a juvenile involved in a delinquency proceeding that could lead to commitment in a juvenile institution. Although **Gault** didn't explain the scope of the right, it made it clear that the juvenile's confrontation right is similar to the established constitutional definition of the right.[117]

The right to confront witnesses against you means that you must have an opportunity to cross-examine all witnesses who testify against you in a trial. In juvenile cases you or your attorney should be able to cross-examine all witnesses who testify against you.

PROTECTION AGAINST DOUBLE JEOPARDY

A recent Supreme Court decision held that the double jeopardy provision applies to juveniles. In **Breed v. Jones**[118] the juvenile court judge dismissed juvenile proceedings after hearing all the evidence, because he decided that the guilty youth should be tried as an adult. The Supreme Court held that once the hearing is held in juvenile court the youth must be tried as a juvenile. In general, a juvenile is placed in jeopardy of loss of liberty in juvenile court proceedings based on a criminal charge. Therefore, once the hearing begins, any **adjudication** by the juvenile court closes off the possibility of transfer to adult court, because you can't be tried twice, once in juvenile court and once in adult court. The Court held that the decision as to whether the juvenile should be tried as an adult must be made before a decision has been reached as to her guilt.

However, evidence taken solely to determine whether or not a juvenile matter should be transferred to adult criminal court is not adjudicatory and so doesn't prevent criminal prosecution.[119] Also, you may be punished by the school, your parents, and the courts, all for the same offense. But you can't be punished twice for the same offense by the court system.

It's obvious that young people are denied rights that are considered fundamental for adults. If you are involved in juvenile court proceedings, be sure that you get at least the rights you now know you have. You may want to demand all the due process rights mentioned in this section, even if the Supreme Court has already denied young people some of those rights (e.g., jury trial). Your state constitution may be interpreted to grant you some of the rights denied you under the U.S. Constitution, or you may convince the judge that at least in your case you should have full due process rights.

A. *FOURTEENTH AMENDMENT*

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Illinois Court Nixes Jury Trial for Juveniles

On November 15, 1976 the Illinois Supreme Court ruled that two juveniles accused of committing felonies did not have the right to a jury trial. The Court was overturning a lower court decision ordering jury trials for the youths.

Commenting on the lower court's decision, the Supreme Court said a jury trial for a juvenile accused of a felony would give the Juvenile Court the appearance and aura of a criminal trial "with all the clash and clamor of the adversary system that necessarily goes with it."

Assistant state attorney Maurice Dore praised the court's decision because it ran counter to "a great movement to make juvenile court into a criminal court."

FOOTNOTES

1. **Tinker v. Des Moines Ind. Sch. Dist.**, 393 U.S. 503 (1969).
2. Courts in the following states have ruled that dress and hair styles are protected expression: Arkansas, Connecticut, Idaho, Illinois, Indiana, Iowa, Maine, Massachusetts, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Rhode Island, South Carolina, South Dakota, Vermont, Virginia, West Virginia, Wisconsin.
3. **Sullivan v. Houston Ind. Sch. Dist.**, 307 F.Supp. 1328 (S.D. Tex 1969);
Jacobs v. Board of School Comm., 349 F.Supp. 605 (S.D. Ind. 1972).
4. **Gustek v. Beehan**, 431 F.2d 594 (6th Cir. 1970), **cert. denied**, 401 U.S. 948 (1971);
Augustus v. School Bd. of Escambia County, Fla., 361 F.Supp. 383 (N.D. Fla. 1973), modified and remanded 507 F.2d 152 (5th Cir. 1975);
Winn v. Ennens, 345 F.Supp. 90 (E.D.Pa. 1972).
5. **West Virginia State Bd. of Ed. v. Barnette**, 319 U.S. 624 (1943).
6. **Street v. New York**, 394 U.S. 576 (1969).
7. **Pratt v. Burns**, 307 F.Supp. 27 (E.D.N.Y. 1969).
8. **Dixon v. Beecah**, 361 F.Supp. 253 (E.D.Mich.S.D. 1973).
See also **Healy v. James**, 408 U.S. 169 (1972).
9. **Wood v. Davison**, 351 F.Supp. 543 (N.C.G.A., 1972);
Grad. Stud. Org. of the Univ. of N.H. v. Bonner, 367 F.Supp. 1088 (D.N.H., 1974), **modified and aff'd.**, 509 F.2d 652 (1st Cir. 1974).
10. **Gorbert v. Hoffman**, 336 F.Supp. 694 (E.D.Pa., 1972).
11. **Chiesa v. State Bd. of Ed.**, 384 F.Supp. 674 (D.Puerto Rico 1974);
Sullivan, **Supra.**
Jacobs v. Bd. of Sch. Comm., 490 F.2d 601 (7th Cir. 1973), **vacated as moot**, 420 U.S. 128 (1975);
Stacy v. Williams, 306 F.Supp. 963 (N.D.Miss. 1969), (Three Judge panel).
12. **Shanley v. Northeast Ind. Sch. Dist.**, 462 F.2d 960 (5th Cir. 1972);
Sullivan v. Houston Ind. Sch. Dist., 307 F.Supp. 1328 (S.D.Tex. 1971), **Supplementary ind. ordered**, 333 F.Supp. 1149, **and vacated**, 475 F.2d 1071 (5th Cir. 1973), **cert. denied**, 414 U.S. 1032 (1973).
13. See note 12. **Shanley v. Northeast Ind. Sch. dist.**, **supra.**
14. **Fujishima v. Bd. of Ed.**, 460 F.2d 1355 (7thCir.1972).
15. **Quarterman v. Byrd**, 453 F.2d 54 (4th Cir. 1971);
Baughman v. Portsmouth, 478 F.2d 1345 (4th Cir. 1973);
Scoville v. Bd. of Ed. of Joliet Township, 425 F.2d 10 (7th Cir. 1970);
Botts v. Dallas Ind. Sch. Dist., 436 F.2d 728 (5th Cir. 1971);
Pitzberg v. Parks, Civ. #74-1839 (4th Cir. 1975).
16. **Crews v. Clones**, 432 F.2d 1259 (7th Cir. 1970).
17. **Scoville v. Bd. of Ed. of Joliet Township**, see note 18, **supra;**
Baughman v. Portsmouth, see note 14, supra.
18. **Ruth v. U.S.**, 354 U.S. 476, (1957), **as modified by Miller v. California**, 413 U.S. 15, (1973).
19. **Glasberg v. New York**, 390 U.S. 629 (1968).
20. **Wooddell v. Bd. of Trustees**, Civ. #73-5-101 (N.D.Ind., May 25, 1973).
21. **N.Y. Times v. Sullivan**, 376 U.S. 254 (1964).
Garrison v. Louisiana, 379 U.S. 64 (1965);
St. Amant v. Thompson, 390 U.S. 727 (1968);
Pitzberg v. Parks, 525 F.2d 378 (4th Cir. 1975).
22. **Thomas v. Sch. Comm. of Quincy**, 439 F.2d 148 (1st Cir. 1971);
Fujishima v. Bd. of Ed., see note 12, supra.
Vail v. Bd. of Education of Portsmouth Sch. Dist., Civ. #72-178 (D.N.H. April 10, 1974).
23. **Elsner v. Stamford Bd. of Ed.**, 440 F.2d 803 (2nd Cir. 1971);
Shanley v. Northeast Ind. Sch. Dist., see note 10, supra.;
Quarterman v. Byrd, 453 F.2d 54 (4th Cir. 1971).
24. See note 22, supra.;
Bowe v. Campbell Union High Sch. Dist., Civ. # 51060 (N.D.Cal. 1971).
25. **Joyner v. Whiting**, 477 F.2d 456 (4th Cir. 1973);
Bonner v. Portman, 476 F.2d 570 (5th Cir. 1973), **aff'd as modified** 489 F.2d 225 (5th Cir. 1973), **cert. denied** 416 U.S.995 (1974);
Trujillo v. Love, 322 F.Supp. 1266 (D.Colo. 1971);
Antonelli v. Hammond, 308 F.Supp. 1329 (D.Mass. 1970);
Barker v. Pontiac, 399 F.Supp. 102 (S.D.N.Y. 1969);
Koppell v. Levine, 347 F.Supp. 456 (E.D.N.Y. 1972);
Wooddell v. Bd. of Trustees, see note 19, supra.
26. **Tilley v. Cobb.**, 362 U.S. 60 (1960);
Bowe v. Campbell Union High Sch. Dist., see note 23, supra.;
Jacobs v. Bd. of Sch. Comm., see note 3, supra.;
Matter of Schlosser, 11 N.Y. Ed. Rep. 293 (N.Y.Ed.Comm. 1972).
27. **Wisconsin v. Yoder**, 406 U.S. 505 (1972).
28. See note 5, supra.
29. **Spence v. Bailey**, 465 F.2d 797 (6th Cir. 1972).
30. **Engel v. Vitale**, 370 U.S. 421 (1962);
Abington Sch. Dist. v. Schempp, 374 U.S. 203 (1963).
31. **Griswold v. Connecticut**, 381 U.S. 479, 85 S.Ct. 1678 (1965).
32. **Baird v. Eisenstadt**, 405 U.S. 438, 92 S.Ct. 1029 (1972).
33. **Carey v. Population Services**, 431 U.S. 678 (1976)
34. 42 U.S.C. Sec. 602 (15) (A) (1974); C.F.R.Sec.220.21.
35. **Roe v. Wade**, 410 U.S. 113, 93 S.Ct. 705 (1973).
36. **Doe v. Bolton**, 410 U.S. 179, 93 S.Ct. 739 (1973).
37. **Planned Parenthood of Central Missouri v. Danforth**, 2 Fam. Law Rptr. 3039 (June 29, 1976).
38. **In re Smith**, 16 Md. App. 209, 295 A.2d 238 (1972).
39. **Glasberg v. N.Y.**, see note 19, supra;
See also **Bellotti v. Sym**, 494 F.2d 1167 (S.H.Cir.1974).
40. Title III of the Postal Rev. and Federal Salary Act of 1967, 81 Stat. 645, 39 U.S.C. Sec. 4009, **continued in Bowen v. S.S.P.O.**, 397 U.S. 728 (1970).
41. **Shahin v. Schober**, In re 86312-71 (S.Ct.Queens Co. Nov. 16, 1971);
Matter of Thibodeaux, 1 Ed. Dept. Rept. 607 (N.Y.Comm. Ed. 1960);
Van Allen v. McCleary, 211 N.Y. S.2d 501 (S.Ct. 1961);
Valentine v. Ind. Sch. Dist., 174 N.W. 334(Iowa, 1919).
Brown v. Pountlerey, 442 F.2d 838 (D.C. Cir. 1971);
In re Marsh, 40 Ill. 2d 53, 237 N.E.2d 529 (1968);
State v. Lowry, 95 N.J. Super. 307, 230 A.2d 907 (1967);
In re Harvey, 222 Pa. Super. 222, 295, A.2d 93 (1972);
In re J.E.M., 487 S.W.2d 502 (Mo. 1972).
42. **State v. Kinderman**, 136 N.W.2d 577 (S.Ct.Minn. 1965);
State v. Vidor, 452 P.2d 961 (S.Ct.Wash. 1969);
(YES) **Urbanek v. People**, 76 Ill. App.2d 375, 222 N.E.2d 233 (1966);
State v. Cardier, 9 Ohio St.2d 1, 222 N.E.2d 620 (1966).
(NO) **People v. Flowers**, 179 N.W.2d 56 (Mich.App. 1970);
Reeves v. Warden, 346 F.2d 915 (4thCir. 1965).
43. **People v. Overton**, 20 N.Y.2d 360 (1967), **vacated**, 393 U.S. 85 (1968), **reinstated on remand**, 24 N.Y.2d 522 (1969);
Moore, 284 F.Supp. 725;
U.S. v. Coles, 302 F.Supp. 99,
State v. Stein, 456 P.2d 1 (Kan. 1968), **cert. denied**, 397 U.S. 947 (1970).
44. **In re Donaldson**, 75 Cal.Rptr. 220, 269 Cal.App.2d 220 (1969);
In re Boykin, 39 Ill.2d 617, 237 N.E.2d 460 (1968).
45. **State v. Mora**, 307 So.2d 317 (La. 1975).
46. **People v. D.**, 34 N.Y.2d 483 (1974);
State v. Buccino, 282 A.2d 869 (Del.Super. 1971);
People v. Jackson, 319 N.Y.S.2d 731, **aff.** 30 N.Y.2d 734 (1971);
People v. State, 450 S.W.2d 715 (Tex.Cir.App. 1970).
47. **Picha v. Wieggus**, 410 F.Supp. 1214 (N.D.Ill. 1976).
48. **Caldwell v. Cannady**, 340 F.Supp. 835 (N.D.Tex. 1972).
49. **Baker v. Owen**, 395 F.Supp. 294 (M.D.N.C. 1975), **aff'd.mem.** 96 S.Ct. 210 (1975).
50. **Ingraham v. Wright**, 430 U.S. 651 (1977).
51. **Nelson v. Hayne**, 355 F.Supp. 451 (N.D.Ind. 1972).
52. **Jackson v. Bishop**, 404 F.2d 571 (8thCir. 1968).
53. **Morales v. Turman**, 364 F.Supp. 166 (E.D.Tex. 1973).
54. **Bolling v. Sharp**, 347 U.S. 497 (1954).
55. **San Antonio Sch. Dist. v. Rodriguez**, 411 U.S. 1 (1973).
56. **Williams v. Rhodes**, 393 U.S. 23 (1968).
57. **McLaughlin v. Florida**, 379 U.S. 184 (1964).
58. See note 57.
59. **Hunter v. Erickson**, 393 U.S. 385 (1969).
60. **Hirabayashi v. U.S.**, 320 U.S. 81 (1943).
61. **Dunn v. Blumstein**, 405 U.S. 330 (1972).
62. **Brown v. Topeka Bd. of Ed.**, 347 U.S. 483 (1954).
63. **Keyes v. School Dist. No. 1**, 413 U.S. 921 (1973).
64. **Swann v. Charlotte Mecklenburg Bd.**, 402 U.S. 1 (1972).
65. See note 64.
66. **Millikan v. Bradley**, 41 L. Ed. 2d 1069 (1974).
67. See note 66.
68. **Hobson v. Hansen**, 269 F.Supp. 401 (D.D.C. 1967).
69. **Pa. Assoc. for Retarded Children v. Commonwealth of Pa.**, 334 F.Supp. 1257 (E.D.Pa. 1971);
Mills v. Bd. of Education of the Dist. of Columbia, 348 F.Supp. 866 (D.D.C. 1972).
70. **Lau v. Nichols**, 414 U.S. 563 (1974);
Serna v. Portales Mun. Schls., 499 F.2d 1147 (10thCir. 1974).
71. **Guadalupe Org., Inc. v. Tempe Elementary Sch. Dist.**, Civ. # 71-435, PHX (D.Ariz. Jan.24, 1972).
72. **Dunn v. Tyler Ind. Sch. Dist.**, 327 F.Supp. 528 (E.D.Tex. 1971) (dictum), **modified**, 460 F.2d 137 (5thCir. 1972);
Woods v. Wright, 334 F.2d 369 (5th Cir. 1964).
73. **Hawkins v. Coleman**, 376 F.Supp. 1330 (N.D.Tex. 1974).
74. Supra, at 1338.
75. **Tillman v. Dade Cty. Sch. Bd.**, 327 F.Supp. 930 (S.D.Fla. 1971).
76. **Rhyne v. Childs**, 359 F.Supp. 1085 (N.D.Fla. 1973), **aff'd sub. nom.**, **Sweet v. Childs**, 507 F.2d 675 (5thCir. 1975).
77. **Kirstein v. Rector and visitors of Univ. of Virginia**, 309 F.Supp. 184 (E.D.Va. 1970)
78. Title IX of the Education Amendments of 1972, Sec. 901(a), 20 U.S.C. 1681 (1974).
79. **Williams v. McNair**, 316 F.Supp. 134 (D.S.C. 1970), **aff'd per curiam**, 401 U.S. 951 (1971).
80. 20 U.S.C. 1681(a)(1)
81. See note 77.
82. **Vorchheimer v. Sch. Dist. of Pa.**, F.2d (3rdCir. 1976).
83. **Hood v. Nebraska Sch. Activities Assoc.**, 341 F.Supp. 258 (D.Neb. 1972).
84. See note 83. Also:
Brendon v. Ind. Sch. Dist., 342 F.Supp. 1224 (D.Minn. 1972), **aff'd.** 477 F.2d 1292 (8thCir. 1973);
Haas v. S. Bend Community Sch. Corp., 289 N.E.2d 495 (Ind. 1972).
85. See **Brendon**, **Hood**, & **Haas**, supra.
86. **Commonwealth of Pa. v. Pa. Interscholastic Athletic Assoc.**, 334 A.2d 839 (1975).
87. **Gregorio v. Bd. of Ed. of Ashbury Pk.**, No. A-1277-70 (N.J., Apr.5, 1971) Sup. Ct.
88. See **Brendon**, note 84, supra.
Pa. v. Pa. Interscholastic Athletic Assoc., supra.
89. **McLeod v. State**, 154 Miss. 468, 122 So. 737 (1929);
Kentucky Bd. of Ed. of Harrodsburg, 383 S.W.2d 677 (Ky. 1964);
Carrollton-Farmers Branch Ind. Sch. Dist. v. Knight, 418 S.W.2d 535 (Tex. Ct. of Civ. App. 1967);
Anderson v. Canyon Ind. Sch. Dist., 412 S.W.2d 387 (Tex.Ct.Civ.App. 1967).
90. **Holt v. Shelton**, 341 F.Supp. 821 (M.D.Tenn. 1972);
Davis v. Meek, 344 F.Supp. 298 (N.D.Ohio 1972);
Wellsand v. Valparaiso Comm. High Sch. Corp. Civ. Act # 71 H.122(2) (N.D.Ind. 1971);
Morse v. Sch. Dist. #7, Yellowstone City, 350 F.Supp. 1180 (D.Mont. 1972).
91. HEW Interpretation of Title IX.
92. HEW Interpretation of Title IX.
93. **Neet v. Bd. of Ed.**, 128 Kan. 507 278 P. 1065 (1929).
Perry v. Grenada Mun. Separate Sch. dist., 300 F.Supp. 748 (N.D.Miss. 1969);
Shull v. Columbus Mun. Separate Sch. Dist., 338 F.Supp. 1376 (N.D.Miss. 1972);
Alvin Ind. Sch. Dist. v. Cooper, 404 S.W.2d 76 (Tex.Ct.of Civ.App. 1966).
94. **Bynes v. Toll**, 512 F.2d 252 (2ndCir. 1975).
95. **Goss v. Lopez**, 419 U.S. 565 (1975).
96. **Dixon v. Ala. State Bd. of Ed.**, 294 F.2d 150 (5th Cir.), **cert. denied**, 368 U.S. 930 (1961);
Esteban v. Central Missouri State Coll., 277 F.Supp. 649 (W.D.Mo. 1967), **approved**, 415 F.2d 1077 (8thCir. 1969), **cert. denied**, 398 U.S. 965 (1970);
Wasson v. Trowbridge, 382 F.2d 807 (2ndCir. 1967);
Jones v. St.Bd. of Ed., 279 F.Supp. 190 (M.D.Tenn. 1968), **aff'd** 407 F.2d 834 (6thCir. 1969), **cert. dismissed**, 397 U.S. 31 (1970).
97. **Vail v. Bd. of Ed.**, 354 F.Supp. 592 (D.N.H., Rem'd for add.l **relief**, 502 F.2d 1159 (1stCir. 1973);
Thomas v. Jenkins, 491 F.2d 722 (4thCir. 1973), **subsq. appeal** 517 F.2d 3 (4thCir. 1975);
Purvis v. LaMarque Ind. Sch. Dist. 460 F.2d 1355 (7thCir. 1972);
Hastor v. L.A. City H.S. Dist., 452 F.2d 673 (9thCir. 1971)
See also note 60, supra.
98. **Detroit Bd. of Ed. v. Scott**, Civic Action No. 176-814 (Cir.Ct.Mich. 1972);
Jordan v. School Dist. of Erie, Civ. Action No. 34-75 (W.D.Pa.,Feb.5, 1974).
99. **O'Connor v. Bd. of Ed. of Sch. Dist. No. 1**, 316 N.Y.S.2d 799 (S.Ct. 1970).
100. **Mills v. Bd. of Ed. of Washington, D.C.**, 348 F.Supp. 866 (D.D.C. 1972);
Pa. Assoc. for Retarded Children v. Commonwealth of Pa., 334 F.Supp. 1257 (E.D.Pa., 1971).
101. **Cook v. Edwards**, 341 F.Supp. 307 (D.N.H. 1972);
Lee v. Macon Cty Bd. of Ed., 490 F.2d 458 (5thCir. 1974);
Payne v. Bd. of Regents, 355 F.Supp. 199 (W.D.Tex. 1972), **aff'd per cur'iam**, 474 F.2d 1397 (5thCir. 1973).
102. **Mayers v. Arcata Union High Sch. Dist.**, 75 Cal.Rptr. 68 (1969).
103. **Sullivan v. Houston Ind. Sch. Dist.**, see note 4, supra.
104. **Bartley v. Kremens**, 402 F.Supp. 1039 (E.D.Pa. 1975).
105. **Krasnow v. Bartley**, No. 75-1064 (U.S.Sup.Ct.1976).
106. **Cooley v. Stone**, 414 F.2d 1213 (D.C.Cir. 1969);
Baldwin v. Lewis, 300 F.Supp. 1220 (E.D.Wis. 1969), **rev'd on other grs.**, 442 F.2d 29 (7thCir. 1971).
107. **Kent v. U.S.**, 383 U.S. 541 (1966).
108. **In the Matter of Samuel Winship**, 397 U.S. 358 (1970).
109. **In re Gault**, 387 U.S. 1,(1967).
110. **Henderson**, 199 N.W.2d 111 (Iowa, 1972).
111. **Kirby v. Illinois**, 406 U.S. 682 (1972).
112. **State v. Richardson**, 495 S.W.2d 435 (1973);
People v. Bacon, 294 N.E.2d 288 (1973).
113. **Haley v. Ohio**, 332 U.S. 596 (1948).
114. **Miranda v. Arizona**, 384 U.S. 436 (1966).
115. **People v. Lara**, 432 P.2d 202 (Cal. 1967).
State v. Ostrowski, 282 N.E.2d 359 (Ohio 1972).
116. **McKeiver v. Pennsylvania**, 403 U.S. 528 (1971).
117. See **Gault** (note 40).
Illinois v. Allen, 397 U.S. 337 (1970).
118. **Breed v. Jones**, 44 L.Ed.2d 346 (1975).
119. **People v. Wilson**, 287 N.E.2d 211 (Ill.C.A. 1972).

9.

"SUE THE BASTARDS!"
LEGAL REMEDIES

Violation of Constitutional Rights

Under **Wood v. Strickland**, a student can win money damages against school administrators, principals, school board members, etc., if they knew or should have known that they were violating one of your rights clearly established by the courts. The most clearly established rights for students are rights of due process and freedom of speech, press, and assembly.

But soon after deciding **Wood**, the U.S. Supreme Court slashed most of its potential effectiveness by holding that unless you can show real damages directly caused by the unconstitutional act, or prove malice on the part of the administrator(s) responsible, only token money awards can be granted.

Other remedies include:

- a **declaratory judgment** that what the school officials did was wrong;
- an **injunction** banning the school from further interference with your constitutional rights;
- a **court order** setting up specific procedures or guidelines for the school to follow, for example, in due process suspension hearings or literature distribution regulations;
- **reinstatement** if you were unjustly suspended or expelled, at least until a hearing can be held;
- **make-up time**, to make up work you missed due to the illegal suspension;
- **lifting of academic sanctions**, like bad grades given to you because of your exercise of your rights; and
- **removal from your school files** of any reference to the illegal suspension, or your First Amendment activities.

Violation of Equal Protection Rights

RACE, COLOR OR NATIONAL ORIGIN DISCRIMINATION

Under **Title VI** of the Civil Rights Act, federal funds are denied to any school that discriminates in any way on the basis of race, color or national origin. Under the **Equal Protection Clause** of the Constitution (see Sec. 1983 of the U.S. Code) you can also sue for **money damages**, a **declaratory judgment** that what they did was wrong, an **injunction** ordering them to stop their discrimination, and the possibility of **contempt** if they disobey the court order.

If your employer violates your right to equal wages, the **equal pay act** allows you to recover all back wages plus an equal amount as punitive damages. If an employer refuses to hire or promote you because you're black, the court can order the employer to hire or promote you.

SEX DISCRIMINATION

Under **Title IX** (1972 Amendments to the Education Act) federal funds may be cut off from any institution that discriminates against students on the basis of sex, whether it's in classes or sports or entrance requirements. But the determination as to whether or not funds are withdrawn is made by the director of HEW, to whom complaints under this Act are directed.

Under the **Equal Protection Clause** of the Constitution you can sue for **money damages**, a **declaratory judgment**, an **injunction** or **court order** directing them to desegregate their educational programs.

Under the **Equal Pay Act**, you can recover all back wages plus an equal amount in punitive damages, if your employer pays you less money for doing the

same or substantially the same work as a man. Ask around at work to be sure you're being paid fairly.

Violation of Privacy Rights Under the Buckley Law

The Buckley Amendment provides for a possible cut-off of federal funds to any educational institution that either refuses your parents access to your student records (within 45 days of the request) or releases information without your parents' permission.

Don't forget that under the Buckley Amendment you have the right to change entries if you disagree with their accuracy, or enter your own version of the facts into the record. This can be important if you are a student activist and disliked by some administrators.

Student Editor Wins $2500 in Out of Court Settlement

Joshua Liebner hadn't planned to make money publishing his underground newspaper, **The Green Orange**, at Washington-Lee High School in Alexandria, Virginia. He just wanted to poke fun at the school administration and school regulations.

"It's an obvious piece of Lampoonic humor," said Liebner, referring to the **Orange**. An example of his work is an article about a fictitious Washington-Lee student who was asking to be executed:

"In one of the most dramatic confrontations in the over 50-year history of Washington-Lee High School, senior Tom Cannon stood before the school's principal and members of the school board and requested that they allow him to be executed rather than serve out 96 detentions he had accumulated."

William Sharbaugh, the principal, didn't get the joke. He warned Liebner not to publish, but Liebner ignored him and passed out the first issue on October 17, 1976. He distributed a second issue on November 5 at a football game, after again being warned not to by the principal. Sharbaugh still wasn't laughing. This time he suspended Liebner for five days.

In a letter to Liebner's parents, Shargaugh said that **The Green Orange** was distributed without prior approval, didn't have Liebner's name on it, and was of "questionable taste, decency and journalistic standards." All of those points, said Sharbaugh, violated school regulations.

Though Liebner was in violation of school policy, the school's policy was in violation of the law. Federal Judge Robert R. Merhige called the school's rule "a monument to vagueness," and granted a temporary restraining order allowing Liebner to distribute the paper.

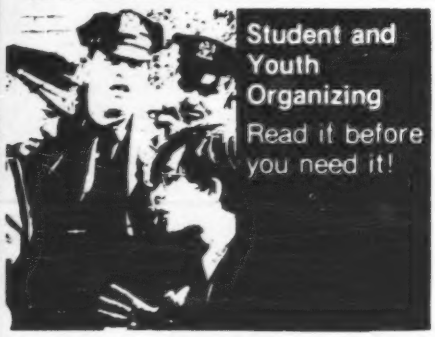
Several weeks later Liebner settled out of court for $2,500. As part of the dismissal order the court ordered the schools to revise their code on student rights relating to student expression. The school board was also told to erase any evidence of the suspension from Liebner's records and not to tell any college or employer about the suspension without also telling them about the court order. In addition, the Board agreed to credit Liebner's record with school days lost by the suspension and to help him with make-up work.

In return, Liebner had to agree not to press his suit. He also had to say he received "procedural due process of law" when he was disciplined, which bothers him.

"I don't agree with that. I think maybe our lawyers . . . didn't think they could win on that."

Despite Liebner's victory, the school will still try to erode the First Amendment. From now on, however, "School officials will rely more strongly on control of the time, place and manner of distribution of materials that might be of a questionable nature," said the board.

FPS #59



A thorough knowledge of one's legal rights is important for any organizer. However, legal action is usually **not** the best way to resolve problems. Court fights are costly, time consuming, and tend to involve only a small number of students.

Youth Liberation recommends going out and **organizing** students to force the system to change, and we sell an excellent manual to help you get started. It's Student and Youth Organizing, and it's available for only $2.50.

10.

"LOOK IT UP IN THE GUTTER."

BIBLIOGRAPHY

Dozens of books and hundreds of pamphlets about student rights have been published over the past seven or eight years. Here we mention a few that are exceptionally informative and relatively up-to-date. You may also want to look over the Youth Liberation books on the next page. They cover a wide range of topics of interest to young organizers.

BOOKS AND NEWSLETTERS

For general information about students and young people, pick up copies of the ACLU's **The Rights of Students**, by Alan H. Levine and Eve Carey, and **The Rights of Young People**, by Alan Sussman. Both these books are written in easy-to-understand question-and-answer format and touch on most major legal issues. They also contain charts with information on ages at which young people may consent to marriage, health care, etc. in all 50 states.

To keep right up to date on what's happening in juvenile law we suggest a subscription to the ACLU's **Juvenile Rights Project Report**. For subscription information write to the ACLU, 22 E. 40th St., NY, NY 10016. Another source for continuing legal information is the Harvard Center for Law and Education, Gutman Library, 6 Appian Way, Cambridge, MA 02138. They have a variety of publications that are useful to students and lawyers. Their book **The Constitutional Rights of Students: Analysis and Litigation Materials for the Student's Lawyer**, edited by P.M. Lines, is packed with information, but it may be a bit hard to read for those unaccustomed to legal terminology.

One of the best books we've found which manages to convey the subtleties of the law behind the actual court decisions is **The Civil Rights of Students**, by David Schimmel and Louis Fischer ($5.95 from Harper and Row). This well-written book includes background arguments, facts about the cases and excerpts from court decisions on many of the cases mentioned only briefly in the booklet you are holding. For the student who wants more detailed information after reading this booklet we strongly recommend **The Civil Rights of Students**. It is also an excellent textbook — students are given the facts and relevant law relating to a case and then encouraged to form their own opinions before the actual opinion of the court is presented. There are thoughtful study and discussion questions with each chapter. Ask your bookstore to order a copy if they don't have it on the shelf.

The Student Press Law Center (Rm. 1112, 1750 Pennsylvania Ave., NW Washington, DC 20006) publishes a superb pamphlet outlining the rights of student editors. It's called the **Manual for Student Expression: The First Amendment Rights of the High School Press** and is available free from the Center.

The National Council of Juvenile Court Judges publishes two good brochures on court cases relating to young people: **The Legal Rights of Children** (1974) and **Supreme Court Decisions and Juvenile Justice** (1973). They are available from the NCJCJ at Box 8978, Reno, Nevada 89507.

Look it up in Gutter

In April, 1977 the Eldon, Missouri Board of Education banned **The American Heritage Dictionary** because it includes too many four-letter words. The Board's decision was in response to a complaint filed by Roy Herren, a Missouri Highway Patrol Trooper who was offended by 39 "objectionable" words. According to Herren, "If people learn words like that it ought to be where you and I learned them — in the streets and in the gutter."

IF YOU NEED A LAWYER...

If you think your rights have been or are about to be violated and that a lawyer can help you, look in your local phone book under the American Civil Liberties Union, the National Lawyers Guild or Legal Aid. The ACLU handles only cases dealing with constitutional issues, while the Guild takes on radical cases in general. Legal Aid handles all sorts of cases for poor people. If there is no local listing, write to the ACLU Juvenile Rights Project, 22 E. 40th St., NY, NY 10016, or the National Lawyers Guild, 23 Cornelia St., NY, NY 10014.

Other organizations that specialize in juvenile rights include the following:

Chicago Public Education Program
407 S. Dearborn St., Chicago, IL 60605 (312) 427-2533

Citizens in Support of Students' Rights
915 Salem Ave., Dayton, OH 46406 (513) 278-4225

Education Law Center
2100 Lewis Tower Bldg., 2225 S. 15th St., Philadelphia, PA 19102 (215) 732-6655 & Suite 800, 605 Broad St., Newark, N.J. 07102 (201) 624-1815.

Youth Law Center
693 Mission St., San Francisco, CA 94105 (415) 495-6420

The Student Advocacy Center
1706 S. University, Ann Arbor, MI 48104 (313) 995-0477

Program for Educational Opportunity
1046 School of Education, Univ. of Michigan, Ann Arbor, MI 48109 (313) 763-9913

Children's Defense Fund
1520 New Hampshire Ave., N.W., Washington, D.C. 20036 (202) 483-1470

IF YOU NEED LEGAL INFORMATION

Several times in this pamphlet we suggest "check the laws in your area." Since only lawyers know how to look up laws don't feel shy about going right up to your local librarian and telling her what you want to know and letting her get the book for you, or show you how to find it yourself. Librarians are usually glad to help someone who has enough initiative to trudge through law books trying to find out what their rights are.

Youth Liberation Press • Materials for Organizers

Student and Youth Organizing — $2.50
A 96-page book which discusses organizing young people in and out of school. It has chapters about issues to organize around, tactics to use, skills to know, problems that come up, and a bibliography. Actual incidents, illustrating the points being discussed, are described throughout the pamphlet.

Unfair to Young People: How the Public Schools Got The Way They Are — $2
A 48-page booklet that examines the public schools from the perspective of students. The author did extensive research on this subject while he was a member of the Wisconsin Youth for Democratic Education. First, he discusses how the school system evolved. Seemingly innocuous reforms like junior high schools, ability grouping, student council and even recess, were all started as ways to better control students, says the author. Then he looks at what schools do to students today, and how they can be changed.

High School Women's Liberation — $2
A collection of over 20 articles about young women's liberation. Included in this 80 page book are discussions about the school scene, sexism in textbooks, sports, lesbianism, black women, sexuality, legal rights, sexism in language and music, and poetry by young women. There are also several book reviews and an article by a man about his experiences with sexism. This is the best resource for young women available today.

Youth Liberation: News, Politics and Survival Information — $2.€9
Some of the best articles from the early issues of FPS are collected in this paperback book, which was published by Times Change Press in 1972. It also contains the original Youth Liberation platform and personal statements from young people on the need to struggle for liberation.

Growing Up Gay — $2
This 40 page booklet contains 20 articles by sensitive young women and men about the experience of being young and gay. Included are articles about accepting one's gayness, coming out and talking with parents. There is an extensive list of resources.

Please add $.50 postage and handling. Complete list available from Youth Liberation, 2007 Washtenaw Ave., Ann Arbor, Mich. 48104 (313) 995-4575.

11.

APPENDIX

The two Supreme Court decisions reprinted here have been shortened to make them easier to read. If you want to do more extensive research in the area of young people's rights you may want to look at copies of the complete decisions. They may be found in any library. We have added italics in some places for emphasis.

TINKER v. DES MOINES

JOHN F. TINKER AND MARY BETH TINKER, MINORS, ETC., ET AL., PETITIONERS,
V.
DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT ET AL.
89 S. CT. 733 (1969)
Decided Feb. 24, 1969

Mr. Justice Fortas delivered the opinion of the Court.

Petitioner John F. Tinker, 15 years old, and petitioner Christopher Eckhardt, 16 years old, attended high schools in Des Moines. Petitioner Mary Beth Tinker, John's sister, was a 13-year old student in junior high school.

In December 1965, a group of adults and students in Des Moines, Iowa, held a meeting at the Eckhardt home. The group determined to publicize their objections to the hostilities in Vietnam and their support for a truce by wearing black armbands during the holiday season and by fasting on December 16 and New Year's Eve. Petitioners and their parents had previously engaged in similar activities, and they decided to participate in the program.

The principals of the Des Moines schools became aware of the plan to wear armbands. On December 14, 1965, they met and adopted a policy that any student wearing an armband to school would be asked to remove it, and if he refused he would be suspended until he returned without the armband. Petitioners were aware of the regulation that the school authorities adopted.

On December 16, Mary Beth and Christopher wore black armbands to their schools. John Tinker wore his armband the next day. They were all sent home and suspended from school until they would come back without their armbands. They did not return to school until after the planned period for wearing armbands had expired — that is, until after New Year's Day....

As we shall discuss, the wearing of armbands in the circumstances of this case was entirely divorced from actually or potentially disruptive conduct by those participating in it. It was closely akin to "pure speech" which, we have repeatedly held, is entitled to comprehensive protection under the First Amendment....

First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. *It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years....*

On the other hand, the Court has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school authorities, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools....

The problem presented by the present case does not relate to regulation of the length of skirts or the type of clothing, to hair style or deportment....It does not concern aggressive, disruptive actions or even group demonstrations. Our problem involves direct, primary First Amendment rights akin to "pure speech."...

The District Court concluded that the action of the school authorities was reasonable because it was based upon their fear of a disturbance from the wearing of the armbands. But, *in our system, undifferentiated fear or apprehension is not enough to overcome the right to freedom of expression. Any word spoken, in class, in the lunchroom or on the campus, that deviates from the views of another person, may start an argument or cause a disturbance. But our Constitution says we must take this risk,...* and our history says that it is this sort of hazardous freedom — this kind of openness — that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious society.

In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly where there is no finding and no showing that the exercise of the forbidden right would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school," the prohibition cannot be sustained. *Burnside v. Byars, 363 F.2d at 749.*

In the present case, the District Court made no such finding, and our independent examination of the record [also fails to find such cause.]...

On the contrary, the action of the school authorities appears to have been based upon an urgent wish to avoid the controversy which might result from the expression, even by the silent symbol of armbands, of opposition to this Nation's part in the conflagration in Vietnam....

It is also relevant that the school authorities did not purport to prohibit the wearing of all symbols of political or controversial significance. The record shows that students in some of the schools wore buttons relating to national political campaigns, and some even wore the Iron Cross, traditionally a symbol of Nazism. The order prohibiting the wearing of armbands did not extend to these. Instead, a particular symbol — black armbands worn to exhibit opposition to this Nation's involvement in Vietnam — was singled out for prohibition. Clearly, the prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with school work or discipline, is not constitutionally permissible.

In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State. In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views. As Judge Gewin, speaking for the Fifth Circuit said, schools cannot suppress "expressions of feelings with which they do not wish to contend." *Burnside v. Byars, 363 F.2d at 749....*

The principle use to which the schools are dedicated is to accomodate students during prescribed hours for the purpose of certain types of activities. Among those activities is personal intercommunication among the students. This is not only an inevitable part of the process of attending school. It is also an important part of the educational process. A student's rights therefore, do not embrace merely the classroom hours. When he is in the cafeteria, or on the playing field, or on the campus during the authorized hours, he may express his opinions, even on controversial subjects like the conflict in Vietnam, if he does so "[without] materially and substantially interfering with appropriate discipline in the operation of the school" and without colliding with the rights of others. *Burnside v. Byars, 363 F.2d at 749*. But conduct by the student, in class or out of it, which for any reason — whether it stems from time, place, or type of behavior — materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guaranty of freedom of speech....

Under our Constitution, free speech is not a right that is given only to be so circumscribed that it exists in principle but not in fact. Freedom of expression would not truly exist if the right could be exercised only in areas that a benevolent government has provided as a safe haven for crackpots....

As we have discussed, the record does not demonstrate any facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities, and no disturbances or disorders on the school premises in fact occurred. These petitioners merely went about their ordained rounds in school. Their deviation consisted only in wearing on their sleeve a band of black cloth, not more than two inches wide. They wore it to exhibit their disapproval of the Vietnam hostilities and their advocacy of a truce, to make their views known, and by their example, to influence others to adopt them. They neither interrupted school activities nor sought to intrude in the school affairs or the lives of others. They caused discussion outside of the classrooms, but no interference with work and no disorder. In the circumstances, our Constitution does not permit officials of the State to deny their form of expression.

in re GAULT

IN THE MATTER OF THE APPLICATION OF PAUL L. GAULT AND MARJORIE GAULT, FATHER AND MOTHER OF GERALD FRANCIS GAULT, A MINOR, APPELLANTS
87 S. CT. 1428
Decided May 15, 1967

***BACKGROUND:** On June 8, 1964, fifteen-year-old Gerald Gault was taken into custody after a neighbor, Mrs. Cook, complained about receiving a phone call in which the caller or callers had made remarks or questions of a "lewd or indecent" nature.*

When Gerald was picked up, both his parents were at work. They were not informed of his arrest, nor was a note left at the house explaining that he had been taken into custody. They did not find out what had happened to Gerald until that evening when they began searching for him.

The following day, Gerald appeared with his mother (his father was at work) before the juvenile judge. Mrs. Cook, the complainant, was not there. No one was sworn to tell the truth, no transcript or recording was made and no memorandum or record of the proceedings was made. Thus the accounts of what happened there varied in the future. After the hearing, Gerald was sent back into detention while the Judge said he would "think about it."

On June 11 or 12, after having been detained since June 8, Gerald was released to his parents to await a further hearing.

This further hearing took place on June 15. Again, Mrs. Cook was not present. In fact, the juvenile judge had never spoken to or communicated with her and the Probation Officer had only spoken to her once — over the phone on June 9. At the end of this hearing, Gerald was committed to the State Industrial School until he was 21 (he was 15 at the time) "unless sooner discharged by due process of law."

When later asked about the basis for his actions, the judge answered that, "Well, there is a — I think it amounts to disturbing the peace. I can't give you the section, but I can tell you the law. That when one person uses lewd language in the presence of another person, that it can amount to — and I consider that when a person makes it over the phone, that it is considered in the presence, I might be wrong, that is one section. The other section upon which I consider the boy delinquent is Section 8-201, Subsection (d), habitually involved in immoral matters."

The actual law which Gerald was found to have violated was ARS 13-377. (If an adult had violated the same law, the maximum penalty would have been a $5 to $50 fine, or imprisonment for not more than two months.)

Mr. Justice Fortas delivered the opinion of the Court.

...This court has not heretofore decided the precise question. In *Kent v. United States* (1966), we considered the requirements for a valid waiver of the "exclusive" jurisdiction of the juvenile court of the District of Columbia so that a juvenile could be tried in the adult criminal court of the District. Although our decision turned upon the language of the statute, we emphasized the necessity that "the basic requirements of due process and fairness" be satisfied in such proceedings. *Haley v. Ohio* (1948) involved the admissibility, in a state criminal court of general jurisdiction, of a confession by a 15-year-old boy. The Court held that the Fourteenth Amendment applied to prohibit the use of the coerced confession. Mr. Justice Douglas said, "Neither man nor child can be allowed to stand condemned by methods which flout constitutional requirements of due process of law." ...Accordingly, while these cases relate only to restricted aspects of the subject, they unmistakably indicate that, whatever may be their precise impact, *neither the Fourteenth Amendment nor the Bill of Rights is for adults alone*....

[In this opinion, we consider the problems which] relate to the proceedings by which a determination is made as to whether a juvenile is a "delinquent" as a result of alleged misconduct on his part, with the consequence that he may be committed to a state institution. As to these proceedings, there appears to be little current dissent from the proposition that the Due Process Clause has a role to play. The problem is to ascertain the precise impact of the due process requirement upon such proceedings....

In *Kent v. United States*, we stated that the juvenile court judge's exercise of the power of the state as *parens patriae* was not unlimited. We said that *"The admonition to function in a 'parental' relationship is not an invitation to procedural arbitrariness."* With respect to the waiver by the juvenile court to the adult court of jurisdiction over an offense committed by a youth, we said that *"there is no place in our system of law for reaching a result of such tremendous consequences without ceremony — without hearing, without effective assistance of counsel, without a statement of reasons."* We announced with respect to such waiver proceedings that while, "We do not mean...to indicate that the hearing to be held must conform with all of the requirements of a criminal trial or even of the usual administrative hearing; but we do hold that *the hearing must measure up to the essentials of due process and fair treatment.*" We reiterate this view, here in connection with a juvenile court adjudication of "delinquency" as a requirement which is part of the Due Process Clause of the Fourteenth Amendment of our Constitution....

We conclude that the Due Process Clause of the Fourteenth Amendment requires that in respect of proceedings to determine delinquency which may result in commitment to an institution in which the juvenile's freedom is curtailed, the child and his parents must be notified of the child's right to be represented by counsel, that counsel will be appointed to represent the child....

It would indeed be surprising if the privilege against self-incrimination were available to hardened criminals but not to children. The language of the States by operation of the Fourteenth Amendment is unequivocal and without exception. And the scope of the privilege is comprehensive.

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FPS a magazine of young people's liberation

Special note to FPS subscribers (including libraries and bookstores): This booklet is published as **FPS #61**

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"A clear, comprehensive outline of young people's rights... Extremely valuable for student rights advocates and all young people who want to fully understand their rights."

• Gabe Kaimowitz
Children's Rights Lawyer

"If I'd had this pamphlet when I was a student, DeQuincy High would have had its much-deserved day in court. High schools all over the country are getting away with murder because students don't have enough knowledge of their legal rights to stop them. Young People and the Law can help remedy that situation."

• Billie Chancey, 1978 graduate,
DeQuincy, Louisiana

Find the Constitutional Mistakes

Imagine you're a 17-year old student activist and president of the student body at a working-class, surburban high school. You work as a volunteer in the peer counseling center at your school.

The local newspaper publishes a three page article on drug use at your school, and quotes you once. Your statement basically calls for voters to approve the tax increase so money will be available to improve conditions in the schools. As a result of this article the peer counseling center is shut down by the school board.

You talk to the superintendent and other administrators to protest the shutdown. While you're talking to the vice-principal a student walkout occurs. Fifty students walk across a parking lot to the administration building on their open-campus lunch hour to protest the center closing.

The next day the local paper prints an article about a press conference with the superintendent, principal, vice-principals, conservative teachers and parents at the newspaper office. The paper quotes people calling you "a hatchet man," and saying you're disturbed and quotes the superintendent revealing your class standing (false information at that!).

Two days later you and 30 other students get an indefinite suspension notice signed by the vice-principal, charging you with "student demonstrations." Later, your locker is searched on a Saturday morning with you or anyone else being informed. You get threatening and obscene phone calls and mail. Your car gets broken into and your glasses are stolen. The administration's false comments about you are reprinted several times even when you're running for school board. You gain 50 pounds and you start smoking twice as much.

What's wrong with this story? Who violated what rights--and what can be done about it? If you don't know the answers now, you should after you read this book. Unfortuantely, this story wasn't designed just so we could illustrate half a dozen constitutional rights. It really happened to someone, and it could happen to anyone who is involved in organizing students at their school.

(See page 17 for answers.)